Alberici Constructors
AN ALBERICI ENTERPRISE

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SUBCONTRACT AGREEMENT

ARTICLE 1

AGREEMENT

This Agreement is entered into this _____ day of _____ in the year _____ by and between **ALBERICI CONSTRUCTORS, INC.,** 8800 Page Avenue, St. Louis, Missouri, referred to in this Agreement as the Contractor, and the

SUBCONTRACTOR

ATTENTION:

referred to in this Agreement as the Subcontractor for services in connection with this

PROJECT NAME
LOCATION

whose

OWNER is

and whose

ARCHITECT/
ENGINEER is

NOTICE TO THE PARTIES SHALL BE GIVEN AT THESE ADDRESSES.

ARTICLE 2

SAFETY

2.1 The Subcontractor is required to perform the Subcontract Work in a safe and reasonable manner. The 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 Subcontract 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 Subcontract Work.

2.2 The Contractor and the Subcontractor shall give all notices required by law and the Subcontract Documents and comply with all applicable rules, regulations, orders and other lawful requirements established to prevent injury, loss or damage to persons or property.

2.3 Not less than ten (10) calendar days before commencing Subcontract Work, Subcontractor shall submit its site-specific Safety Program to the Contractor's Project Manager for approval. Such Program shall implement safety measures, policies and standards conforming to those required or recommended by the Contractor, the Owner, governmental and quasi-governmental authorities having jurisdiction, including, but not limited to, requirements imposed by the Subcontract Documents. Such Program shall be comprehensive and shall require the implementation of safety measures according to the best current industry practices pertaining to the Subcontract Work and the Project, including establishing safety rules, tie off and fall protection requirements, posting appropriate warnings and notices, erecting and/or maintaining appropriate 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.

2.4 The Subcontractor shall give twenty-four (24) hour written notice to the Contractor in carrying out any of the Subcontract Work which involves explosive or other dangerous methods of construction or hazardous procedures, materials or equipment. The Subcontractor shall use properly-qualified individuals or entities to carry out the Subcontract Work in a safe and reasonable manner so as to protect persons and property at the site and adjacent to the site from injury, loss or damage.

2.5 Damage or loss to property which results from negligence and which is not covered by property insurance shall be promptly remedied by: (1) Subcontractor, to the extent of the negligence attributed to acts or omissions of the Subcontractor, or anyone for whose acts or omissions the Subcontractor may be liable; and (2) Contractor to the extent of the negligence attributed to acts or omissions of the Contractor, or any of its agents or employees.

2.6 The Contractor's safety representative shall be its corporate vice president in charge of safety. The Subcontractor shall designate an employee who shall be on-site full-time, who shall act as the Subcontractor's designated safety representative, and who shall have the responsibility for Subcontractor's compliance with Subcontractor's Safety Program. The name of Subcontractor's safety representative shall be submitted by Subcontractor to the Contractor not less than ten (10) calendar days prior to commencing Subcontract Work.

2.7 The Subcontractor has an affirmative duty not to overload the structures or conditions at the site and shall take reasonable steps not to load any part of the structures or site so as to give rise to an unsafe condition or create a risk of personal injury or property damage. The Subcontractor shall have the right to request, in writing, from the Contractor loading information concerning the structures at the site and Contractor will obtain such information from the Architect-Engineer and provide it to Subcontractor in a written response. The Subcontractor will not load the structure until such response is received.

2.8 The Subcontractor shall notify the Contractor immediately following any accident involving personal injury, any property damage, or any incident or "near miss" that could have resulted in serious personal injury or property damage, whether or not such an injury or damage was sustained.

2.9 Prevention of accidents at the site is the responsibility of the Contractor, the Subcontractor, and all other subcontractors, persons and entities at the site. Establishment of a safety program by the Contractor shall not relieve the Subcontractor or other parties of their safety responsibilities. The 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 that the Contractor deems unsafe until corrective measures satisfactory to the Contractor are taken. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility for those practices. The Subcontractor shall notify the Contractor immediately following an accident, incident or "near miss" and promptly confirm the notice in writing. A detailed written report shall be furnished to the Contractor within twenty-four (24) hours. Each party to this Agreement shall indemnify the other party from and against fines or penalties imposed as a result of safety violations, but only to the extent that such fines or penalties are caused by its failure to comply with safety requirements imposed by this Subcontract and by applicable law.

2.10 The Subcontractor shall remove from the Project any employee who creates an unsafe condition, or who performs work in an unsafe manner on the Project, or who fails any drug and/or alcohol test given in connection with this Project, or who violates the Contractor's Safety Procedures. The Subcontractor agrees not to assign that employee to this or any of the Contractor's other Projects for the period of time specified in the Contractor's Safety Program Protection Procedures.

ARTICLE 3

SCOPE OF SUBCONTRACT WORK

3.1 **Subcontract Work** The Contractor retains the Subcontractor as an independent contractor, to provide all labor, materials, equipment and services necessary or incidental to complete the part of the work which the Contractor has contracted with the Owner to provide on the Project as set forth in Exhibit A to this Agreement, consistent with the Project Schedule and in strict accordance with and reasonably inferable from the Subcontract Documents. The Subcontractor agrees to perform such part of the work (hereafter called "Subcontract Work") for the Project under the general direction of

the Contractor and subject to the final approval of the Contractor, Architect/Engineer or other specified representative of the Owner.

3.2 Contractor's Work The Contractor's work is the construction and services required of the Contractor to fulfill its obligations pursuant to its agreement with the Owner ("the Work"). The Subcontract Work is a portion of the Work.

3.3 Subcontractor Qualifications The Subcontractor represents it is fully experienced and qualified to perform the Subcontract Work and it is properly equipped, organized, financed and, if necessary, licensed and/or certified to execute the Subcontract Work.

3.4 Subcontract Documents The Subcontract Documents include this Agreement, the Owner-Contractor Agreement, including all administrative and procedural provisions, together with all authorized changes, additions and modifications. The Contractor's Contract with the Owner includes, but is not limited to, the Agreement between the Contractor and the Owner (except for financial information), all addenda, modifications, revisions, plans, drawings, specifications, details, together with all general, technical, supplementary and special terms and conditions, any invitations for bids or information for bidders, if any, to the extent applicable, and all other documents listed in or referred to by the Contractor's Contract with the Owner.

The Contractor shall make available to the Subcontractor, prior to the execution of the Subcontract Agreement, copies of the Subcontract Documents to which the Subcontractor will be bound. The Contractor shall make available to the Subcontractor the Contractor's Contract with the Owner, except for financial information, after the Contract is fully executed. In the same manner, the Subcontractor shall make copies of applicable portions of the Subcontract Documents available to its proposed sub-subcontractors and suppliers.

3.5 Conflicts In the event of a conflict between this Agreement and the other Subcontract Documents, this Agreement shall govern.

3.6 Interpretations Should questions arise with respect to the interpretation of the drawings, specifications, or any other Contract Document, such questions shall be submitted, if necessary, by the Contractor to the Architect/Engineer for its interpretation. If there is no Architect/Engineer for this Project, the Subcontractor will comply with the Contractor's decision. The Subcontractor shall make submission of all questions to the Contractor within seven (7) calendar days of the Subcontractor's recognition of the occurrence of the event forming the basis of the question.

3.7 Mutuality The Contractor and the Subcontractor are mutually bound by the terms of this Subcontract. To the extent the terms of the prime contract between the Owner and the Contractor apply to the work of the Subcontractor, then the Contractor assumes toward the Subcontractor all the obligations, rights, duties and redress that the Owner under the Contractor's Contract with the Owner assumes toward the Contractor. In the identical way, the Subcontractor assumes toward the Contractor all the same obligations, rights, duties and redress that the Contractor assumes toward the Owner and Architect/Engineer under the prime contract.

3.8 Extent of Agreement Nothing in this Agreement or the Subcontract Documents shall be construed to create a contractual relationship between persons or entities other than the Contractor and the Subcontractor. This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. No modification of this Agreement shall be binding unless the same is in writing signed by the Contractor and the Subcontractor. In the event the Subcontractor commences performance prior to the execution of this Agreement, the Subcontractor acknowledges and agrees that it shall be bound by the terms and conditions of this Agreement as of the date the Subcontract Work is commenced.

ARTICLE 4

SUBCONTRACTOR'S RESPONSIBILITIES

4.1 Responsibilities The Subcontractor shall furnish its best skill and judgment in the performance of the Subcontract Work and shall perform its work to the satisfaction of the Contractor, the Owner and the Architect/Engineer, so the Contractor may fulfill its obligations to the Owner. The Subcontractor shall furnish all of the labor, materials, equipment, and services, including but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of the Subcontract Work. The Subcontractor shall be responsible for taking field dimensions, providing tests, obtaining required permits and affidavits, ordering of materials and all other actions as required to meet the Schedule of Work.

4.2 Inconsistencies and Omissions The Subcontractor shall make a careful analysis and comparison of the drawings, specifications, other Subcontract Documents and information furnished by the Owner relative to the Subcontract Work. The Subcontractor shall notify the Contractor in writing within three (3) business days of the Subcontractor's discovery of any inconsistencies or omissions in the Subcontract Documents. Within three (3) business days of receipt of notice, the Contractor shall record the notice in its project control system and provide the Subcontractor with a timetable for instruction from the Owner or its representative. The Contractor shall instruct the Subcontractor as to the measures to be taken when such instructions are received and the Subcontractor shall comply with the Contractor's instructions. If the Subcontractor fails to perform the obligations of this paragraph, the Subcontractor shall pay such costs and damages to the Contractor as would have been avoided if the Subcontractor had performed such obligations. Nothing in this paragraph shall relieve the Subcontractor of responsibility for its own errors, inconsistencies and omissions.

4.3 Site Visit The Subcontractor accepts responsibility for the visual inspection of conditions that could affect the Subcontract Work at the Project site, and based on that inspection acknowledges its responsibility to satisfactorily perform the Subcontract Work without additional expense to the Contractor. The Subcontractor represents it has satisfied itself and has become fully acquainted with the nature and location of the Subcontract Work, the general and local conditions, particularly those bearing upon safety precautions, permits, inspections, code compliance, transportation, disposal, handling and storage of materials, availability of labor, water, electric power, utilities, roads, weather conditions, river stages or similar physical conditions, the conformation and condition of the ground, the soil structure and subsurface conditions, obstructions, actual levels, excavating, filling in, the character of equipment and facilities needed preliminarily to and during the prosecution of the Subcontract Work, the probability of new tax levies or increases in taxes, costs of materials, wage rates, work rules and all other matters which in any way might affect the Subcontract Work, or its cost. The Subcontractor shall promptly report any discrepancies between its observations and the Subcontract Documents to the Contractor.

4.4 Increased Costs and/or Time

4.4.1 If the Subcontractor fails to perform the reviews and comparisons required in Paragraphs 4.2 and 4.3, and as otherwise required by the Subcontract Documents, to the extent the Contractor is held liable to the Owner because of the Subcontractor's failure, the Subcontractor shall pay the costs and damages to the Contractor that would have been avoided if the Subcontractor had performed those obligations.

4.4.2 The Subcontractor may assert a Claim as provided in Article 6 if the Contractor's clarifications or instructions in response to requests for information are believed to require additional time or cost.

4.5 Identification of Sub-subcontractors and Suppliers Prior to commencement of the Subcontract Work, the Subcontractor must provide to the Contractor, in writing, the names, addresses, and phone numbers of all sub-subcontractors and suppliers that will be supplying labor and/or materials in relation to the Subcontract Work under this Agreement, including the names of each of their representatives. This same information must be provided prior to adding or changing any sub-subcontractors or suppliers during the course of the Project. Failure of the Subcontractor to provide, in writing, any of this information to the Contractor shall be grounds for the Contractor to withhold progress payments from the Subcontractor, which funds shall be released once Subcontractor has cured the failure.

4.6 Communications Unless otherwise provided in the Subcontract Documents and except for emergencies, the Subcontractor shall direct all communications involving the Owner related to the Project to the Contractor.

4.7 Progress Reports

4.7.1 The Subcontractor shall furnish periodic progress reports of the Subcontract Work as requested by the Contractor including the progress of delivery of materials or equipment to be provided under this Agreement that may be in the course of preparation or manufacture.

4.7.2 Deliveries to the site must be pre-arranged with at least twenty-four (24) hours written notice, unless received by the Subcontractor.

4.8 Meetings At the Contractor's discretion, the Subcontractor shall attend all kick-off meetings, Project meetings, emergency meetings, close-out meetings and Owner/Architect walk-throughs. Failure to provide adequate representation at such meetings as directed by the Contractor shall be a breach of this Agreement. Renotification of attendance requirements to the Subcontractor by the Contractor will not be made for routine meetings.

4.9 Submittals The Subcontractor shall promptly submit for approval to the Contractor all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Subcontract Documents. The Subcontractor shall prepare and deliver its submittals to the Contractor in a manner consistent with the Schedule of Work and in such time and sequence so as not to delay the Contractor or others in the performance of the Work. When its submittals are delivered to the Contractor, the Subcontractor shall advise the Contractor in writing of any deviations in the submittals from the requirements of the Subcontract Documents and shall note such deviations in its submittals. In the absence of any such notifications, the Subcontractor shall warrant that its submittals are in conformance with the Subcontract Documents. The Subcontractor shall be responsible to the Contractor for the adequacy, accuracy, completeness and conformity of its submittals to the Subcontract Documents. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Subcontract Documents unless express written approval is obtained from the Contractor and the Owner authorizing such deviation, substitution or change. In the event the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees, upon request, to submit in a timely fashion to the Contractor, for approval, any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Contractor, the Owner or Architect/Engineer.

4.10 Design Delegation

4.10.1 If the Subcontract Documents (1) specifically require the Subcontractor to provide design services and (2) specify all design and performance criteria, the Subcontractor shall provide the design services necessary to satisfactorily complete the Subcontract Work. Design services provided by the Subcontractor shall be procured from licensed, design professionals (the "Designer") retained by the Subcontractor as permitted by the law of the place where the Project is located. The Designer's signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by the Designer. Shop Drawings and other submittals related to the Subcontract Work designed or certified by the Designer, if prepared by others, shall bear the Subcontractor's and the Designer's written approvals when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by the Designer.

4.10.2 If the Designer is an independent professional, the design services shall be procured pursuant to a separate agreement between the Subcontractor and the Designer. The Subcontractor-Designer agreement shall not provide for any limitation of liability or exclusion from participation in the multiparty proceedings requirement of Paragraph 11.3. If applicable, the Designer(s) is (are)

_____

_____

_____

The Subcontractor shall notify the Contractor in writing if it intends to change the Designer. The Subcontractor warrants the design furnished by the Designer will be in conformance with the information given and the design concept expressed in the Subcontract Documents. The Subcontractor shall not be responsible for the adequacy of the performance or design criteria required by the Subcontract Documents furnished by the Owner, Architect/Engineer or Contractor.

4.10.3 The Subcontractor shall not be required to provide design services in violation of any applicable law.

4.11 Coordination The Subcontractor shall: cooperate with the Contractor and other subcontractors whose work may affect the Subcontract Work; participate in the preparation of coordinated drawings and Subcontract Work schedules in areas of congestion; and specifically note and promptly advise the Contractor in writing of any such interference by other contractors or subcontractors.

4.12 Tests and Inspections The Subcontractor shall schedule all required tests, approvals and inspections of the Subcontract Work at

appropriate times so as not to delay the progress of the Work. The Subcontractor shall give proper written notice to all required parties of such tests, approvals and inspections. The Subcontractor shall bear all expenses associated with tests, inspections and approvals required of the Subcontractor by the Subcontract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity approved by the Contractor and the Owner. Certificates of testing, approval or inspection required by the Subcontract Documents or the law shall be secured by the Subcontractor and promptly delivered to the Contractor.

4.13 Cleanup The Subcontractor shall follow the Contractor's cleanup directions, and:

.1 at all times keep the building and premises free from debris and unsafe conditions resulting from the Subcontract Work; and

.2 broom clean each work area prior to discontinuing Subcontract Work in the area.

The Contractor shall furnish waste/rubbish container service and designate containers for the Subcontractor's use. The Subcontractor shall deposit only waste/rubbish from this Project that is non-toxic, non-hazardous and legally permissible for such waste/rubbish containers. The Subcontractor will dispose of all of the Subcontractor's toxic and hazardous waste, including all containers, by removing the same from the Project site immediately in the manner required by law and regulations.

Upon completion of the Subcontract Work, the Subcontractor shall remove from the Project and legally dispose of all temporary structures, debris and waste and clean all surfaces, fixtures, equipment and materials pertaining to or affected by the Subcontract Work. If the Subcontractor fails to commence compliance with cleanup duties within twenty-four (24) hours after written notification from the Contractor of non-compliance, the Contractor may implement such cleanup measures as it deems necessary without further notice and deduct the cost from any amounts due or to become due the Subcontractor.

4.14 Hazardous Materials To the extent the Contractor has rights or obligations under the Owner-Contractor Agreement or by law regarding hazardous materials as defined by the Subcontract Documents within the scope of the Subcontract Work, the Subcontractor shall have the same rights or obligations.

4.15 Protection of Subcontract Work The Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor, its agents, servants or employees cause damage to the Work or property of the Owner, the Contractor or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor. After giving the Subcontractor three (3) calendar days notice in writing and Subcontractor's subsequent failure to commence and continue satisfactory correction of the damage the Contractor may remedy the damage and deduct its cost from any amounts due or to become due the Subcontractor, unless such costs are promptly paid by insurance applicable to damages to property.

4.16 Layout Responsibility and Levels The Contractor shall establish principal axis lines of the building and site, and benchmarks. The Subcontractor shall lay out and be strictly responsible for the accuracy of the Subcontract Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to lay out or perform Subcontract Work correctly. The Subcontractor shall exercise prudence so the actual final conditions and details shall result in alignment of finished surfaces.

4.17 Warranties The Subcontractor warrants all materials and equipment furnished under this Agreement shall be new, unless otherwise specified, of good quality, in conformance with the Subcontract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Work or a portion of the Work as designated in writing by the Contractor.

4.18 Uncovering/Correction of Subcontract Work

4.18.1 Uncovering of Subcontract Work

The Contractor may direct the Subcontractor to uncover portions of the Subcontract Work for inspection by the Owner or the Contractor at any time. The Subcontractor is required to uncover such work whether or not the Contractor or the Owner had requested to inspect the Subcontract Work prior to it being covered. If the Subcontractor has covered any portion of the Subcontract Work in violation of the Subcontract Documents or contrary to a directive issued to the Subcontractor by the Contractor, the Subcontractor shall uncover such work for the Contractor's or the Owner's inspection and restore the uncovered Subcontract Work to its original condition at the Subcontractor's time and expense. In any other situation this Agreement shall be adjusted by change order for the cost and time of uncovering and restoring any work which is uncovered for inspection and proves to be installed in accordance with the Subcontract Documents, provided the Contractor had not previously instructed the Subcontractor to leave the work uncovered. If the Subcontractor uncovers Subcontract Work pursuant to a directive issued by the Contractor, and such work upon inspection does not comply with the Subcontract Documents, the Subcontractor shall be responsible for all costs and time of uncovering, correcting and restoring the work so as to make it conform to the Subcontract Documents. If the Contractor or some other entity for which the Subcontractor is not responsible caused the nonconforming condition, and Subcontractor was unaware of this condition when the work was covered, the Contractor shall be required to adjust this Agreement by change order for all such costs and time.

4.18.2 Correction of Subcontract Work

4.18.2.1 If the Subcontract Work is not in conformance with the Subcontract Documents, the Subcontractor shall promptly correct the Subcontract Work whether it had been fabricated, installed or completed. The Subcontractor shall be responsible for the costs of correcting such Subcontract Work, any additional testing, inspections, and compensation for services and expenses of the Architect/Engineer and the Contractor made necessary by the defective Subcontract Work.

4.18.2.2 In addition to the Subcontractor's obligations pursuant to this Paragraph, the Subcontractor agrees to correct all Subcontract Work performed under this Agreement which proves to be defective in workmanship or materials within a period of one year from the date of Substantial Completion of the Subcontract Work or for a longer period of time as may be required by specific warranties in the Subcontract Documents. Substantial Completion occurs as defined by the Owner's Contract Documents. In the absence of such definition, Substantial Completion of the Subcontract Work, or a designated portion, occurs on the date when construction is suffi-

ciently complete in accordance with the Subcontract Documents so the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended.

4.18.2.3 The Subcontractor's correction of Subcontract Work pursuant to this Paragraph 4.18.2 shall not extend the correction period required by the Subcontract Documents, but if any Subcontract Work is first performed after Substantial Completion, such correction period shall be extended by the time period between Substantial Completion and the performance of that portion of Subcontract Work. The Subcontractor's obligation to correct Subcontract Work within the correction period required by the Subcontract Documents as described in this Paragraph 4.18.2 does not limit the enforcement of the Subcontractor's other obligations with regard to the Agreement and the Subcontract Documents.

4.18.2.4 If the Subcontractor's correction or removal of Subcontract Work destroys or damages completed or partially completed work of the Owner, the Contractor or any separate contractors, the Subcontractor shall be responsible for the cost of correcting such destroyed or damaged construction.

4.18.2.5 If portions of the Subcontract Work which do not conform with the requirements of the Subcontract Documents are neither corrected by the Subcontractor nor accepted by the Contractor, the Subcontractor shall remove such Subcontract Work from the Project site if so directed by the Contractor.

4.19 Materials or Equipment Furnished by Others In the event the scope of the Subcontract Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to exercise proper care in receiving, handling, storing and installing such items, unless otherwise provided in the Subcontract Documents. The Subcontractor shall examine the items provided and report to the Contractor in writing any items it may discover that do not conform to requirements of the Subcontract Documents. The Subcontractor shall not proceed to install nonconforming items without further instructions from the Contractor. Loss or damage due to acts or omissions of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.

4.20 Substitutions No substitutions shall be made in the Subcontract Work unless permitted in the Subcontract Documents, and only upon the Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions.

4.21 Systems and Equipment Startup If required by the Subcontract Documents, with the assistance of the Owner's maintenance personnel and the Contractor, the Subcontractor shall direct the check-out and operation of systems and equipment for readiness, and assist in their initial startup and the testing of the Subcontract Work.

4.22 Use of Contractor's Equipment The Subcontractor, its agents, employees, subcontractors or suppliers shall use the Contractor's equipment only with the express written permission of the Contractor's designated representative and in accordance with the Contractor's terms and conditions for such use. If the Subcontractor or any of its agents, employees, subcontractors or suppliers utilize any of the Contractor's equipment, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Contractor, including equipment which is operated by an employee of the Contractor under the direction of the Subcontractor, the Subcontractor shall defend, indemnify and be liable to the Contractor as provided in Article 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Contractor's employees operating the Contractor's equipment.

4.23 Communication with the Owner Until final completion of the Subcontract Work, the Subcontractor agrees not to communicate directly with the Owner's representatives in connection with the Project, unless otherwise approved in writing by the Contractor.

4.24 Compliance with Laws

4.24.1 The Subcontractor agrees to be bound by, and at its own costs comply with, all federal, state and local laws, ordinances and regulations (the "Laws") applicable to the Subcontract Work, including but not limited to safety, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, sexual and racial harassment, and all other Laws with which the Contractor must comply.

4.24.2 Where prescribed by Law pursuant to direct Federal contracts or Federally-financed or aided contracts, or otherwise required by Law, the Subcontractor agrees the following clauses found in the Subcontract Documents or in the Code of Federal Regulations (CFR) are incorporated in this Subcontract and binding on Subcontractor as if written herein word for word: the clauses entitled "Equal Opportunity Clause" (41 CFR Sections 60-1.4 & 60-4.3); "Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans of the Vietnam Era" (41 CFR Section 60-250.4); "Affirmative Action Obligations of Contractors and Subcontractors for Handicapped Workers" (41 CFR Section 60-741.1); "Contract Work Hours and Safety Standards Act-Overtime Compensation"; "Apprentices and Trainees"; "Payrolls and Basic Records"; "Compliance with Copeland Act Requirements"; "Withholding"; "Subcontracts"; "Contract Termination-Department"; "Disputes Concerning Labor Standards"; "Compliance with Davis-Bacon and Related Act Requirements"; and "Certification of Eligibility" and such other clauses as the Federal Government has required by law or contract. Subcontractor agrees to include all such clauses in any non-exempt, lower-tier subcontracts.

4.24.3 The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its Sub-Subcontractors at any tier, and its and their respective employees and agents resulting from the failure to comply with Laws, including, but not limited to, any fines, penalties or corrective measures, except as provided in Subparagraph 2.9.

4.25 Confidentiality To the extent the Owner-Contractor Agreement provides for the confidentiality of any of the Owner's proprietary or otherwise confidential information disclosed in connection with the performance of this Agreement, the Subcontractor is equally bound by the Owner's confidentiality requirements.

4.26 Royalties, Patents and Copyrights The Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems incorporated in the Subcontract Work. The Subcontractor shall defend, indemnify and hold the Contractor and the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of Subcontractor's voluntary selection of any patented or copyrighted materials, methods, or systems for the Subcontract Work, including those shown on approved submittals. The Subcontractor shall be liable for all loss, including all costs, expenses, and attorneys' fees, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Subcontract Documents. However, if the Subcontractor has reason to believe that a particular

design, process or product required by the Subcontract Documents is an infringement of a patent or copyright, the Subcontractor shall promptly furnish such information to the Contractor or be responsible to the Contractor and the Owner for any loss sustained as a result.

4.27 Labor Harmony and Relations

4.27.1 The Subcontractor shall be responsible for any and all losses and/or damages as a result of delay or extra work resulting from any labor difficulties caused by the Subcontractor's workforce, including but not limited to strikes, picketing or other union or labor-related activity impacting upon Subcontract Work or the work of others. This provision shall not apply (1) to a strike or labor action caused as a result of the Subcontractor being a member of a collective bargaining group, and (2) to a work stoppage caused by a jurisdictional dispute where prior notice was given by the Subcontractor to the Contractor but the Contractor did not resolve the dispute.

4.27.2 If the Subcontractor becomes involved in any labor difficulties which materially impede or delay Subcontract Work, the Contractor may, without prejudice to any other right or remedy, terminate this Agreement with the Subcontractor, giving the Subcontractor twenty four (24) hours written notice of its intention to do so, and may thereupon take control of the Subcontract Work covered by this Agreement and may take possession of all materials and equipment thereon, and complete the Subcontract Work, in which case the Subcontractor shall not be entitled to receive any further payments until the Subcontract Work is completed. In such event, no sum shall be deemed due or to become due except as is provided in Subparagraph 10.5.1.

4.27.3 If there are any conditions, obligations or requirements relative to labor relations and their effect on the project they are attached as Exhibit E.

4.28 Permits, Fees, Licenses and Taxes The Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work, and shall be responsible for all permits, fees, licenses, assessments, inspections, testing and taxes necessary to complete the Subcontract Work in accordance with the Subcontract Documents. To the extent reimbursement is obtained by the Contractor before or with final payment from the Owner under the Owner-Contractor Agreement, the Subcontractor shall be compensated for additional costs resulting from taxes enacted after the date of this Agreement.

4.29 Assignment of Subcontract Work The Subcontractor shall not assign the whole nor any part of the Subcontract Work without prior written approval of the Contractor.

4.30 Limitations Nothing contained in this Article 4 shall be construed to establish a period of limitation with respect to other obligations which the Subcontractor has under the Laws or under the Subcontract Documents. Establishment of the time period of one year as described in Paragraph 4.18.2 relates only to the specific obligation of the Subcontractor to correct the Subcontract Work, and has no relationship to time within which the obligation to comply with the Subcontract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Subcontractor's liability with respect to the Subcontractor's obligations.

ARTICLE 5

CONTRACTOR'S RESPONSIBILITIES

5.1 Communication The Contractor shall transmit to the Subcontractor, with reasonable promptness, all submittals, transmittals, and written approvals relative to the Subcontract Work. Unless otherwise specified in the Subcontract Documents, communications by and with the Subcontractor's, sub-subcontractors and suppliers shall be through the Subcontractor.

5.2 Information and Services Provided by Contractor To the extent the Contractor has obtained any information and services identified below from the Owner, the Contractor shall provide them to the Subcontractor. The Subcontractor shall be entitled to rely on such information and services to the same extent as the Contractor. However, the Contractor does not warrant the accuracy or completeness of such information or services.

.1 All necessary information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations.

.2 Inspection and testing services during construction as required by law or as mutually agreed.

.3 Necessary approvals, site plan review, rezoning easements and assessments, necessary permits, fees and charges required for the construction, use, occupancy or renovations of permanent structures, including legal and other services required therefore.

.4 Such information as the Contractor has obtained relative to the Owner's financial ability to pay for the Work.

.5 Any information or services relevant to the performance of the Subcontract Work which is under the Owner's control.

.6 Contract Documents issued by the Owner and the Architect/Engineer.

5.3 Contractor Application for Payment Upon request, the Contractor shall give the Subcontractor a copy of the most current Contractor application for payment reflecting the amounts approved and/or paid by the Owner for the Subcontract Work performed to date, but not reflecting any confidential financial information.

ARTICLE 6

SCHEDULE OF SUBCONTRACT WORK

6.1 Schedule Obligations The Subcontractor shall provide the Contractor with scheduling information and the Subcontractor's proposed schedule for the Subcontract Work. The Contractor may prepare the Schedule of Work for the Project and, as may be necessary, revise the same as the work progresses.

6.2 Time is of the Essence Time is of the essence as to the prosecution of the Subcontract Work so the entire Project may be completed in accordance with the Subcontract Documents and the Schedule of Work as set forth in Exhibit F or, in the absence of such Exhibit, as established by the Contractor and as revised from time to time by the Contractor.

6.3 Priority of Work The Subcontractor shall commence the Subcontract Work promptly within five (5) calendar days after the date of the notice to proceed issued by the Contractor. The Subcontractor shall commence, continue and complete its performance of the Subcontract Work in a prompt and diligent manner in such time, order, and manner as directed by the Contractor and in accordance with the Schedule of Work without hindering the work of the Contractor or any other Subcontractor, and so as to ensure completion as directed by the Contractor. Whenever, in the Contractor's opinion, the Subcontractor fails to maintain its part of the Schedule of Work, the Contractor may direct the Subcontractor to take all steps, such as overtime or shift work, until the Subcontract Work is in accordance with such Schedule. Such steps shall be without additional cost to or compensation from the Contractor.

6.4 Liquidated Damages As a result of time being of the essence, the Subcontractor shall be liable to the Contractor for liquidated damages, not as a penalty, to the same extent the Contractor shall be liable to the Owner under the Subcontract Documents, and the Contractor shall have no obligation to prove actual damages. The Contractor shall make no demand for liquidated damages in any sum in excess of the amount specifically named in the Subcontract Documents. Liquidated damages, when assessed, shall not exceed the Subcontractor's proportionate share of the responsibility for such liquidated damages. This provision does not preclude any claim the Contractor may have for direct damages under this Agreement or the law. This paragraph shall survive any abandonment by or termination of the Subcontractor.

6.5 Delays and Extensions of Time

6.5.1 Owner-Caused Delay Subject to Subparagraph 6.5.2, if the commencement and/or progress of the Subcontract Work is delayed without the fault or responsibility of the Subcontractor, the time for the Subcontract Work shall be extended by Subcontract Change Order to the extent obtained by the Contractor from the Owner pursuant to the Owner–Contractor Agreement, and the Schedule of Work shall be revised accordingly.

6.5.2 Claims Relating To Owner The Subcontractor agrees to make all claims for which the Owner and/or another subcontractor is or may be liable in the manner and within the time limits provided in the Subcontract Documents for like claims by the Contractor upon the Owner and/or another subcontractor. The Subcontractor also agrees to make such claims in sufficient time for the Contractor to initiate such claims against the Owner and/or another subcontractor in accordance with the Subcontract Documents. At the Subcontractor's request and expense, to the extent agreed upon in writing, the Contractor agrees to permit the Subcontractor to prosecute a claim in the name of the Contractor for the use and benefit of the Subcontractor in the manner provided in the Subcontract Documents for like claims by the Contractor upon the Owner.

6.5.3 Contractor-Caused Delay Nothing in this Article shall preclude the Subcontractor's recovery of direct damages resulting from unreasonable delay caused solely by the Contractor.

6.5.4 Claims Relating to Contractor The Subcontractor shall give the Contractor written notice of all claims not included in Subparagraph 6.5.2 within seven (7) calendar days of the occurrence of the event giving rise to the event for which claim is made; otherwise, such claims shall be deemed waived. All unresolved claims, disputes and other matters in question between the Contractor and the Subcontractor not relating to claims included in Subparagraph 6.5.2 shall be resolved in the manner provided in Article 11.

6.6 Mutual Waiver of Consequential Damages

6.6.1 To the extent the Owner-Contractor Agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, the Contractor and the Subcontractor waive claims against each other for consequential damages arising out of or relating to this Agreement, including to the extent provided in the Owner-Contractor Agreement, damages for principal office expenses and the compensation of personnel stationed there; for loss of financing, business and reputation; and for loss of profit. To the extent applicable, this mutual waiver applies to consequential damages due to termination by the Contractor or the Owner in accordance with this Agreement or the Owner-Contractor Agreement. To the extent the Owner-Contractor Agreement does not preclude the award of liquidated damages, nothing contained in this Paragraph shall preclude the imposition of such damages, if applicable in accordance with the requirements of the Subcontract Documents.

6.6.2 Damages for which the Contractor is liable to the Owner, including those related to Subparagraph 9.1, are not consequential damages for the purpose of this waiver.

ARTICLE 7

SUBCONTRACT PRICE AND PAYMENT

7.1 The Contractor agrees to pay to the Subcontractor for the satisfactory completion of Subcontract Work the sum of

_____

_____

($ _____)

which sum includes all applicable taxes, and is subject to additions or deductions as provided in Article 8. Any applicable alternates or unit prices are set forth in Exhibit A to this Agreement.

7.2 Schedule of Values and Cost Breakdown As a condition to payment, the Subcontractor shall provide a schedule of values satisfactory to the Contractor with the Subcontractor's first invoice. In the event the Contractor elects to terminate for convenience any portion of the Work which falls within the scope of this Agreement, the credit to the Subcontractor shall be determined by first referring to the schedule of values provided by the Subcontractor pursuant to this sub-paragraph. Failure to provide the schedule of values shall be grounds for the Contractor to withhold payment from the Subcontractor.

7.3 Progress Payments

7.3.1 Application The Subcontractor's application for payment shall be itemized and supported by substantiating data as required by the Contractor. If the Subcontractor is obligated to provide design services pursuant to Paragraph 4.11, the Subcontractor's applications for payment shall show the Designer's fee and expenses as a separate cost item. The Subcontractor's application shall be notarized, if required, and, if allowed under the Subcontract Documents, may include properly-authorized Construction Change Directives. The Subcontractor's progress payment application for Subcontract Work performed in the preceding payment period shall be submitted for approval of the Contractor in accordance with the schedule of values and cost breakdown submitted pursuant to Paragraph 7.2, as well as Subparagraphs 7.3.2, 7.3.3, and 7.3.4. The Contractor shall incorporate the approved amount of the Subcontractor's progress payment application into the Contractor's payment application to the Owner

for the same period and submit it to the Owner in a timely fashion. The Contractor shall immediately notify the Subcontractor of any changes in the amount requested on behalf of the Subcontractor.

7.3.2 Retainage The rate of retainage shall be equal to the percentage retained from the Contractor's payment by the Owner for the Subcontract Work.

7.3.3 Time of Application Unless otherwise provided for in the Subcontract Documents or as mutually agreed between the Contractor and the Subcontractor, the Subcontractor shall submit progress payment applications to the Contractor no later than the 25th day of each month for Subcontract Work performed up to the end of that month indicating the Subcontract Work completed and, to the extent allowed under Subparagraph 7.3.4, materials suitably stored during the payment period.

7.3.4 Stored Materials Unless otherwise provided in the Subcontract Documents, and if approved in advance by the Owner, applications for payment may include materials and equipment not incorporated in the Subcontract Work but delivered and suitably stored at the site or at some other location agreed upon in writing. Approval of payment applications for such stored items on or off the site shall be conditioned upon submission by the Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to the Owner and the Contractor to establish the Owner's title to such materials and equipment, or otherwise to protect the Owner's and the Contractor's interest, including transportation to the site.

7.3.5 Time of Payments Progress payments to the Subcontractor for satisfactory performance of the Subcontract Work shall be made no later than ten (10) calendar days after receipt by the Contractor of payment from the Owner for the Subcontract Work. If payment from the Owner for such Subcontract Work is not received by the Contractor, through no fault of the Subcontractor, the Contractor will make payment to the Subcontractor within a reasonable time for the Subcontract Work satisfactorily performed. This reasonable period of time shall be defined to be that period of time which will allow the Contractor to diligently pursue dispute resolution procedures for non-payment available under the Owner-Contractor Agreement or by Law to collect such sums as are justly payable to the Contractor and all Subcontractors.

7.3.6 Payment Delay If the Contractor has received payment from the Owner and if for any reason not the fault of the Subcontractor, the Subcontractor does not receive a progress payment from the Contractor within seven (7) calendar days after the date such payment is due, as defined in Subparagraph 7.3.5, the Subcontractor, upon giving an additional seven (7) calendar days written notice to the Contractor, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to the Subcontractor has been received. The Subcontract Amount and Time shall be adjusted by the amount of the Subcontractor's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate Subcontractor Change Order.

7.3.7 Deductions The Contractor may deduct from any amounts due or to become due to the Subcontractor any sum or sums owed by the Subcontractor to the Contractor. In the event of any breach by the Subcontractor of any provision or obligation of this Agreement, or in the event of or the assertion by other parties of any claim or lien against the Owner, the Contractor, the Contractor's Surety, the public improvement fund or the premises upon which the Subcontract Work was performed, which claim or lien arises out of the Subcontractor's performance of this Agreement, the Contractor shall have the right, but is not required, to retain out of any payments due or to become due to the Subcontractor an amount sufficient to completely protect the Contractor from any and all loss, damage or expense therefrom, until the claim or lien has been resolved or removed by the Subcontractor to the satisfaction of the Contractor. The Contractor shall give the Subcontractor five (5) calendar days notice in writing following Contractor's discovery of reason to withhold any payments from Subcontractor. The Subcontractor shall remove or secure Contractor and Owner against loss on account thereof with an adequate surety bond, satisfactory in the discretionary judgment of the Contractor and the Owner, in the amount required by any applicable state statute, or if no statute is applicable, then in an amount equal to 150% of the lien claimed, within thirty (30) calendar days after any liens have been filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Subcontract Work. If the Subcontractor fails to so remove or secure such liens, the Contractor may remove the liens at the Subcontractor's expense, including bond costs and attorney's fees. This paragraph shall be applicable even in the event the Subcontractor has posted a full payment and performance bond.

7.3.8 Withholding Notwithstanding any other provision, the Contractor may additionally withhold any payment or payments due or to become due to the Subcontractor if and to the extent the Contractor deems it necessary or desirable to protect itself against possible loss or damages for any reason including, but not limited to:

.1 defective Subcontract Work not remedied to the satisfaction of the Contractor;

.2 third-party claims or reasonable evidence indicating probable third-party claims;

.3 failure or alleged failure of the Subcontractor to make payments to its sub-subcontractors or suppliers as required;

.4 inability, or reasonable doubt as to the ability, of the Subcontractor to complete the Subcontract Work within the required time or for the unpaid balance of the Subcontract sum;

.5 damage to the Contractor or a separate subcontractor;

.6 unsatisfactory prosecution of the Subcontract Work by the Subcontractor;

.7 The Subcontractor's failure to provide the Contractor with insurance certificates in compliance with Exhibit B;

.8 The Subcontractor's failure to provide the Contractor with a written list of sub-subcontractor's and suppliers as required by Paragraph 4.5 of this Agreement;

.9 The Subcontractor's failure to provide the Contractor with weekly-certified payroll records if required by Subcontract Documents;

.10 The Subcontractor's failure to provide a schedule of values and/or detailed cost breakdown of Subcontract Work pursuant to Paragraph 7.2 of this Agreement.

The Contractor shall give the Subcontractor five (5) calendar days notice in writing following Contractor's discovery of reason to with-

hold any payments from Subcontractor.

7.3.9 Proper Application of Progress Payments Payment received by the Subcontractor shall be used to satisfy the indebtedness owed by the Subcontractor to its subcontractors, suppliers, laborers or materialmen furnishing labor or materials for use in performing the Subcontract Work on this Project before it is used in any other manner. As a prerequisite for payment, the Subcontractor shall provide, in a form satisfactory to the Owner and the Contractor, partial lien and claim waivers and affidavits from the Subcontractor and its sub-subcontractors and suppliers for the completed Subcontract Work. Such waivers and affidavits may be made conditional upon payment.

7.3.10 Payment Utilization In the event it appears to the Contractor that the labor, material and other bills incurred in the performance of Subcontract Work are not being currently paid, the Contractor may take such steps as it deems necessary to ensure the money paid with any progress payment will be utilized to pay such bills, with such steps including, but not limited to, payment by checks made jointly payable to the Subcontractor and the Subcontractor's subcontractors and/or materialmen, or if Subcontractor fails to cooperate in effecting such joint payments, by direct payment to such parties and withholding from progress payments an amount to protect the Contractor from any and all potential or actual claims, losses, or damages, including reasonable attorneys' fees arising out of the same.

7.3.11 Payment Use Verification The Contractor shall have the right at all times to directly contact the Subcontractor's sub-subcontractors and suppliers to ensure the same are being paid promptly by the Subcontractor for the labor or materials furnished for use in performing the Subcontract Work.

7.4 Final Payment

7.4.1 Application Upon acceptance of the Subcontract Work by the Owner and the Contractor and receipt from the Subcontractor of evidence of fulfillment of the Subcontractor's obligations in accordance with the Subcontract Documents and Subparagraph 7.4.2, the Contractor shall forward the Subcontractor's application for final payment without delay.

7.4.2 Requirements Before the Contractor shall be required to forward the Subcontractor's application for final payment to the Owner, the Subcontractor shall submit to the Contractor:

.1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontract Work for which the Owner, the Owner's property or the Contractor or the Contractor's surety might in any way be liable, have been paid or otherwise satisfied;

.2 consent of surety to final payment;

.3 satisfaction of required closeout procedures;

.4 at Contractor's option, to provide a certification that insurance required by the Subcontract Documents to remain in effect beyond final payment is in effect and will not be canceled or allowed to expire without at least thirty (30) calendar days written notice to the Contractor;

.5 other data, if required by the Contractor or the Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be designated by the Contractor or the Owner;

.6 written warranties and equipment manuals; and

.7 as-built drawings if required by the Subcontract Documents.

7.4.3 Time of Payment Final payment of the balance due of the Subcontract Price shall be made to the Subcontractor:

.1 upon receipt of the Owner's waiver of all claims related to the Subcontract Work except for unsettled liens, unknown defective Subcontract Work, and non-compliance with the Subcontract Documents or warranties; and

.2 within thirty (30) calendar days after receipt by the Contractor of final payment from the Owner for such Subcontract Work.

.3 If the Owner or its designated agent does not issue a certificate for final payment or the Contractor does not receive such payment for any cause which is not the fault of the Subcontractor, the Contractor shall promptly inform the Subcontractor in writing. The Contractor shall also diligently pursue, with the assistance of the Subcontractor, the prompt release by the Owner of the final payment due for the Subcontract Work. If final payment from the Owner for such Subcontract Work is not received by the Contractor, through no fault of the Subcontractor, the Contractor will make payment to the Subcontractor within a reasonable time for the Subcontract Work satisfactorily performed. If the non-payment by Owner is not attributable to the Contractor's default, a reasonable period of time will be allowed Contractor to diligently pursue dispute resolution procedures for non-payment available under the Owner-Contractor Agreement or by Law to collect such sums as are justly payable to the Contractor and all Subcontractors.

7.4.4 Waiver of Claims Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontract Work, except those claims specifically reserved by Subcontractor in writing before final payment is made. Contractor shall make payment of such amounts not otherwise in dispute. Contractor's making of such final payment shall in no way relieve the Subcontractor of liability for the obligations assumed under Paragraphs 4.18.1 and 4.18.2, or for faulty or defective Subcontract Work discovered after final payment. Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Subcontract Work.

7.5 Subcontractor's Assignment of Payments The Subcontractor shall not assign any money due or to become due under this Agreement, without the written consent of the Contractor, unless the assignment is intended to create a new security interest within the scope of Article 9 of the Uniform Commercial Code. Should the Subcontractor assign all or any part of any money due or to become due under this Agreement to create a new security interest or for any other purpose, the instrument of assignment shall contain a clause to the effect that the assignee's right in and to any money due or to become due to the Subcontractor shall be subject to the claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Subcontract Work.

7.6 Sums Are Tentatively Earned All sums tentatively earned by Subcontractor by the partial or complete performance of the Sub-

contract Work and any balance of unearned Subcontract Price, if and when paid by Owner to the Contractor, shall constitute a fund for the purpose of (a) full and timely completion of the Subcontract Work and fulfillment of all Subcontract requirements, (b) payment of any backcharges or claims due Contractor from Subcontractor based upon this Subcontract or otherwise, and (c) payment to the sub-subcontractors, workers, design professionals, material and service suppliers of Subcontractor, and others who have valid and enforceable mechanic's lien claims or valid and enforceable bond claims (if the Project is bonded). Such tentative earnings shall not be due or payable to Subcontractor or anyone else claiming in Subcontractor's place and stead, including but not limited to a Trustee in bankruptcy or receiver, until and unless such Subcontract Work is fully and satisfactorily completed, all Subcontract requirements are fulfilled, Contractor and such persons are fully paid and satisfied and the provisions of 7.4.2 are fully satisfied. Subcontractor agrees to promptly pay all sub-subcontractors, workers, vendors and suppliers of Subcontractor and to provide Contractor with each application for periodic progress payments and the final payment, such lien waivers or proof of such payment as Contractor may require. At any time, Contractor may demand additional written evidence of Subcontractor's capability to perform and of such payments to such persons by Subcontractor. Subcontractor declares all funds received by Subcontractor from Contractor hereunder shall be deemed to be held by Subcontractor in Trust for the benefit of those furnishing work, labor, materials, services, equipment, etc., to or through Subcontractor for the Subcontract Work.

7.7 Interest No interest shall accrue or be due the Subcontractor on any funds or payments described in Article 7, including reserves, paid within the time periods set forth herein, nor shall interest accrue or be due the Subcontractor for any funds withheld to protect the interests of the Contractor or the Owner as set forth elsewhere in this Agreement.

ARTICLE 8

CHANGES IN SUBCONTRACT WORK

8.1 Subcontract Change Orders The Contractor and the Subcontractor agree the Contractor may add to or deduct from the amount of the Subcontract Work covered by this Agreement, and any changes so made in the amount of the Subcontract Work involved, or any other parts of this Agreement, shall be by a written Change Order setting forth in detail the changes involved and the value of such which shall be mutually agreed upon between the Contractor and the Subcontractor. The Subcontractor agrees to proceed with the Subcontract Work as changed when so directed in writing by a Construction Change Directive issued by the Contractor so as not to delay the progress of the Work, and pending any determination of the value. Contractor shall not make changes in Subcontract Work, whether additions, deletions or other revisions in any manner except by written Change Order or Construction Change Directive. If the Contractor requests a proposal of cost for a change, the Subcontractor shall promptly comply with such request. A Change Order is a written instrument prepared by the Contractor and signed by the Subcontractor stating their agreement upon the change in the Subcontract Work.

8.2 The Subcontractor shall not be entitled to receive additional compensation for extra work or materials or changes of any kind except to the extent the same was ordered by the Contractor or any of its representatives. The Subcontractor shall be responsible for any costs incurred by the Contractor for changes of any kind made by the Subcontractor that increase the cost of the Work for either the Contractor or other subcontractors when the Subcontractor proceeds with such changes without a Change Order or Construction Change Directive.

8.3 Unknown Conditions If in the performance of the Subcontract Work the Subcontractor finds latent, concealed or subsurface physical conditions which differ materially from those indicated in the Subcontract Documents or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist, and not generally recognized as inherent in the kind of Subcontract Work provided for in this Agreement, the Subcontractor shall notify the Contractor before those conditions are disturbed, and subject to Paragraph 6.5.2, no later than seven (7) calendar days after its observance of the conditions. The adjustment which the Subcontractor may receive in Subcontract Amount and/or in the Schedule of the Subcontract Work shall be limited to the adjustment the Contractor receives from the Owner on behalf of the Subcontractor (exclusive of the Contractor's markup) unless Contractor and Subcontractor have agreed upon a price and the work is performed before the Owner has taken any action on the adjustment.

8.4 Determination by Owner or Architect/Engineer Notwithstanding any other provision, if the Subcontract Work for which the Subcontractor claims additional compensation is determined by the Owner or Architect/Engineer not to entitle the Contractor to a Change Order, additional compensation or a time extension because such work is within the scope of the Subcontract Work as defined by Paragraph 3.1, then the Contractor shall not be liable to the Subcontractor for any additional compensation or time extension for such Subcontract Work, unless the Contractor agrees in writing to pay such additional compensation or to grant such extension.

8.5 Adjustments in the Subcontract Amount If a Change Order requires an adjustment in the Subcontract Amount, the adjustment shall be established by one of the following methods:

.1 mutual acceptance of an itemized lump sum, or

.2 unit prices as indicated in the Subcontract Documents or as subsequently agreed to by the parties; or

.3 costs determined in a manner acceptable to the parties and a mutually-acceptable fixed or percentage fee; or

.4 another method provided in the Subcontract Documents.

8.6 Substantiation of Adjustment If the Subcontractor does not respond promptly or disputes the method of adjustment, the method and the adjustment shall be determined by the Contractor on the basis of reasonable expenditures and savings of those performing the Subcontract Work attributable to the change, including, in the case of an increase in the Subcontract Amount, an allowance for overhead and profit of the percentage provided in Paragraph 8.7. The Subcontractor shall maintain for the Contractor's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Change Order:

.1 direct labor costs, including Social Security, health, welfare, retirement and other fringe benefits as normally required, state workers' compensation insurance, and state occupational disease insurance;

.2 costs of materials, supplies and equipment, whether incorporated in the Subcontract Work or consumed, including transportation costs;

.3 costs of renting machinery and equipment other than hand tools;

.4 costs of bond and insurance premiums, permit fees and taxes attributable to the change; and

.5 costs of additional supervision and field office personnel services necessitated by the change.

8.7 Adjustments shall be based on the net change in the Subcontractor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase in cost, an agreed-upon sum for overhead and profit not to exceed fifteen percent (15%).

8.8 **Emergencies** In an emergency affecting the safety of persons and/or property, the Subcontractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Subcontract Amount and/or the Progress Schedule on account of emergency work shall be determined as provided in this Article.

8.9 All changes and/or additions in the Subcontract Work ordered in writing by the Contractor shall be deemed a part of the Subcontract Work and shall be performed and furnished in strict accordance with all terms and conditions of this Agreement and the Subcontract Documents, including the current Schedule of Work.

8.10 No notice to the Subcontractor's surety shall be required for any such change, addition, or omission. The Subcontractor shall promptly arrange for an increase in the penal sum of any surety bond due to additions to the Subcontract Work, unless such increase is waived by the Contractor in writing.

8.11 **Incidental Changes** The Contractor may direct the Subcontractor to perform incidental changes in the Subcontract Work which do not involve adjustments in the Subcontract Amount or Subcontract Time. Incidental changes shall be consistent with the scope and intent of the Subcontract Documents. The Contractor shall initiate an incidental change in the Subcontract Work by issuing a written order to the Subcontractor. Such written notice shall be carried out promptly and is binding on the parties.

ARTICLE 9

INDEMNITY AND INSURANCE

9.1 **Indemnity** To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless the Contractor to the same extent Contractor is obligated to defend, indemnify and hold harmless the Owner.

9.1.1 In the absence of such owner-required defense and indemnification, the Subcontractor shall defend, indemnify and hold harmless the Contractor, the Contractor's other subcontractors, the Architect/Engineer, the Owner and their agents, consultants, members and employees (the Indemnitees) from and against all claims, damages, loses and expenses, including, but not limited to, attorneys' fees, costs and expenses for bodily injury and property damage that may arise from the performance of the Subcontract Work to the extent of the negligent acts or omissions by, or the fault of, the Subcontractor, the Subcontractor's sub-subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts or omissions any of them may be liable. The Subcontractor agrees to purchase and maintain contractual liability insurance covering its obligations in this article. These obligations shall not be interpreted to reduce or negate any other rights or obligations of indemnity otherwise existing with regard as to any party or person described in this Article.

9.2 **No Limitation on Liability** In any and all claims against the Indemnitees by any employee of the Subcontractor, Contractor or its agents or employees, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts or omissions the Subcontractor may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for the Subcontractor under Worker's Compensation acts, disability benefit acts or other employee benefit acts.

9.3 **Subcontractor's Insurance** Before commencing the Subcontract Work, and as a condition of payment, the Subcontractor shall purchase and maintain insurance that will protect it from the claims arising out of its operations under this Agreement, whether the operations are by the Subcontractor, or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

9.4 **Minimum Limits of Liability** The Subcontractor shall maintain at least the limits of liability in a company satisfactory to the Contractor as set forth in Exhibit B.

9.5 **Bonding** The Subcontractor ~~shall~~/shall not (strike one) furnish to the Contractor, as named Obligee with others as Obligees at Contractor's option, surety bonds to secure the faithful performance of the Subcontract Work and to satisfy all Subcontractor payment obligations related to Subcontract Work. If bonds are required they shall be furnished by a surety acceptable to the Contractor, in the full amount of the Subcontract Amount, and on the forms attached as Exhibit G.

9.5.1 In the event the Subcontractor shall fail to promptly provide any required bonds, the Contractor may terminate this Agreement and enter into a subcontract for the balance of the Subcontract Work with another subcontractor. All Contractor costs and expenses incurred by the Contractor as a result of said termination, beyond those Contractor would have incurred in the absence of the termination, shall be paid by the Subcontractor.

ARTICLE 10

CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT

10.1 **Failure of Performance**

10.1.1 **Notice to Cure** If the Subcontractor is unable, refuses or fails to supply enough properly-skilled workers, proper materials, or maintain the Schedule of Work, or fails to make prompt payment to its workers, subcontractors or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, the Subcontractor shall be deemed in default of this Agreement. If the Subcontractor fails within one (1) business day after written notification to commence and continue satisfactory correction of the default with diligence and promptness, then the

Contractor without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

.1 supply workers, materials, equipment and facilities as the Contractor deems necessary for the completion of the Subcontract Work or any part which the Subcontractor has failed to complete or perform after written notification, and charge the cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to the Subcontractor;

.2 contract with one or more additional contractors to perform such part of the Subcontract Work as the Contractor determines will provide the most expeditious completion of the Subcontract Work, and charge the cost to the Subcontractor as provided under Paragraph 10.1.1.1; and/or

.3 withhold any payments due or to become due the Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of the Contractor.

In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice, but the Contractor shall give the Subcontractor notice promptly after the fact as a precondition of cost recovery.

10.2 Suspension by Contractor The Contractor may order the Subcontractor in writing to suspend, delay or interrupt all or any part of the Subcontract Work for such period of time as may be determined to be appropriate for the convenience of the Contractor. Subcontract Work when required to be phased or interrupted shall not be deemed a suspension.

10.2.1 The Subcontractor shall notify the Contractor in writing ten (10) business days after receipt of the Contractor's order suspending, delaying or interrupting the Subcontract Work of the effect of such order upon the Subcontract Work. To the extent allowed the Contractor under its agreement with the Owner, the Subcontract Price or Schedule of the Work shall be adjusted by Subcontract Change Order for any increase in the time or cost of performance of this Agreement caused by such suspension, delay or interruption.

10.2.2 No claim relating to suspension shall be allowed for any costs incurred more than ten (10) business days prior to the Subcontractor's notice to the Contractor as provided in Subparagraph 10.2.1.

10.2.3 Neither the Subcontract Price nor the Schedule of the Subcontract Work shall be adjusted under this Article for any suspension, delay or interruption to the extent that performance would have been suspended, delayed, or interrupted by the fault or negligence of the Subcontractor or by a cause for which the Subcontractor would have been responsible.

10.2.4 The Subcontract Price shall not be adjusted under this Article for any suspension, delay or interruption to the extent that performance would have been suspended, delayed or interrupted by a cause for which the Subcontractor would have been entitled only to a time extension under this Agreement.

10.2.5 In the event the Subcontract Work suspended, delayed or interrupted is, for any reason, deleted from the Contractor's or the Subcontractor's scope of work, the Contractor shall be liable to the Subcontractor solely for the reasonable value of Subcontract Work performed by the Subcontractor (as reflected in the Subcontractor's schedule of values and breakdown of Subcontract Work) prior to such deletion, including reasonable overhead and profit on Subcontract Work performed, but only to the extent the Contractor receives payment from the Owner for such Subcontract Work as provided in Subparagraph 7.3.5. Pursuant to the Subcontractor's request, the Contractor may, in its sole discretion, pursue the Owner for any shortfall in payment to Contractor for the reasonable value of Subcontract Work performed by Subcontractor prior to such deletion. Subcontractor shall be responsible for its proportionate costs and expenses associated with such action and shall provide whatever assistance Contractor requests in pursuit of such claim.

10.3 Suspension by Owner Should the Owner suspend its agreement with the Contractor or any part which includes the Subcontract Work, the Contractor shall notify the Subcontractor in writing and upon receiving notification the Subcontractor shall immediately suspend the Subcontract Work. In the event of Owner suspension, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor.

10.4 Termination for Convenience The Contractor may, at any time, terminate this Agreement, in whole or in part, for the Contractor's convenience and without cause. Upon receipt of written notice from the Contractor of such termination for the Contractor's convenience the Subcontractor shall (1) cease operations as directed by the Contractor in the notice; and (2) take actions necessary, or that the Contractor may direct, for the protection and preservation of the Subcontract Work; and (3) except for the Subcontract Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and not enter into further subcontracts and purchase orders. In the event of termination for the Contractor's convenience, the Contractor shall reimburse the Subcontractor for reasonable costs and a reasonable profit on such costs directly resulting from such action, but the Subcontractor shall not be entitled to prospective profits, overhead on Subcontract Work not performed, materials not furnished, nor other consequential losses.

10.5 Termination by Contractor If the Subcontractor at any time causes by any act or omission a significant violation of the Contractor's safety policies, refuses or neglects to supply sufficient properly skilled workers or materials or equipment of the proper quality and quantity, or fails in any respect to prosecute Subcontract Work with promptness and diligence, or causes by any action or omission the stoppage, delay or interference with the Work, or materially fails in the performance of any of the covenants contained in this Article or elsewhere in this Agreement, or becomes unable to meet its debts as they mature, or assigns or sublets Subcontract Work or any money due pursuant to this Agreement without the Contractor's written consent, the Contractor may at its option, after serving written notice of such default with direction to cure the default in not less than two (2) business days and the Subcontractor fails to cure the default to the satisfaction of the Contractor, terminate the Subcontractor's employment by delivering written notice of termination to the Subcontractor. Thereafter the Contractor may take possession of the plant and Subcontract Work, materials, tools, appliances and equipment of the Subcontractor at the Project site, and through itself or others provide labor, equipment and materials to prosecute Subcontract Work on such terms and conditions as shall be deemed by the

Contractor as necessary, and shall deduct the cost, including without restriction all claims, charges, expenses, losses, costs, damages, and attorneys' fees, incurred as a result of the Subcontractor's failure to perform, from any money then due or thereafter to become due to the Subcontractor under this Agreement.

10.5.1 If the Contractor so terminates the employment of the Subcontractor, the Subcontractor shall not be entitled to any further payments under this Agreement and no sum shall be deemed due or to become due to the Subcontractor until Subcontract Work has been completed and accepted by the Owner, all Subcontract requirements have been fulfilled, and payment has been received by the Contractor from the Owner. In the event the unpaid subcontract earnings exceed the Contractor's cost of completion and any and all incidental costs, including administrative, legal and other professional fees, the difference shall be paid to the Subcontractor, but if such expenses exceed the subcontract earnings, the Subcontractor agrees to pay the difference to the Contractor promptly.

10.5.2 Wrongful Exercise If it is determined or agreed that the Contractor wrongfully exercised any option under this Article, the Contractor shall be liable to the Subcontractor solely for the reasonable value of Subcontract Work performed by the Subcontractor prior to such action, including reasonable overhead and profit on the Subcontract Work performed, less prior payments made. Under no circumstances shall the Subcontractor be entitled to recovery of claimed lost future profits.

10.6 Termination by Owner Should the Owner terminate its contract with the Contractor or any part which includes the Subcontract Work, the Contractor shall notify the Subcontractor in writing and upon written notification, this Agreement shall be terminated and the Subcontractor shall immediately stop the Subcontract Work, follow all of the Contractor's instructions, and mitigate all costs. In the event of Owner termination, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner termination and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor.

10.7 Bankruptcy

10.7.1 Termination Absent Cure If the Subcontractor files a petition under the Bankruptcy Code, the Subcontractor agrees it is essential to the performance of this Subcontract and the overall completion of the Project that the Subcontract Work continue without interruption, and further that this Agreement shall terminate if the Subcontractor or the Subcontractor's trustee rejects the Agreement or, if there has been a default, the Subcontractor is unable to give adequate assurance that the Subcontractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

10.7.2 Interim Remedies If the Subcontractor is not performing in accordance with the Schedule of Work at the time a petition in bankruptcy is filed, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its trustee to either reject this Agreement or to assume this Agreement and provide adequate assurance of its ability to perform, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Schedule of Work. The Contractor may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided including, but not limited to, reasonable overhead, profit and attorney's fees. The Subcontractor shall be liable for the payment of the amount by which all such costs incurred exceed the unpaid balance of Subcontract earnings.

10.8 Contingent Assignment of Subcontract The Contractor's contingent assignment of the Subcontract to the Owner, as provided in the Contractor's agreement with the Owner, is effective when the Owner has terminated the Contract for cause and has accepted the assignment by notifying the Subcontractor in writing. This contingent assignment is subject to the prior rights of a surety that may be obligated under the Contractor's bond, if any. The Subcontractor consents to such assignment and agrees to be bound to the assignee by the terms of this Subcontract.

ARTICLE 11

DISPUTES

11.1 Initial Dispute Resolution If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions between corporate officers of the Contractor and the Subcontractor. If the dispute cannot be resolved through direct discussions, the parties shall participate in mediation under the Construction Industry Mediation Rules of the American Arbitration Association before recourse to any other form of binding dispute resolution. The location of the mediation shall be the location of the Project. Once a party files a request for mediation with the other party and with the American Arbitration Association, the parties agree to commence such mediation within thirty (30) calendar days of filing of the request. Either party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person to the other party and the mediator. Engaging in mediation is a condition precedent to any other form of binding dispute resolution.

11.2 Work Continuation and Payment Unless otherwise agreed in writing, the Subcontractor shall continue the Subcontract Work and maintain the Schedule of Work during any dispute resolution proceedings. As the Subcontractor continues to perform, the Contractor shall continue to make payments in accordance with this Agreement.

11.3 Multiparty Proceeding To the extent permitted by Subcontract Documents, all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. To the extent disputes between the Contractor and the Subcontractor involve in whole or in part disputes between the Contractor and the Owner, disputes between the Subcontractor and the Contractor shall be decided by the same tribunal and in the same forum as disputes between the Contractor and the Owner.

11.4 Disputes Between Contractor and Subcontractor In the event the provisions for resolution of disputes between the Contractor and the Owner contained in the Subcontract Documents do not permit consolidation or joinder with disputes of third parties, such as the Subcontractor, resolution of disputes between the Subcontractor and the Contractor involving in whole or in part disputes between the Contractor and the Owner shall be stayed pending conclusion of any dispute resolution proceeding between the Contractor and the Owner. At the conclusion of those proceedings, disputes between the Subcontractor and the Contractor, to the extent not resolved in

the proceedings between Owner and Contractor, shall be submitted again to mediation pursuant to Paragraph 11.1. Any disputes not resolved by mediation shall be decided by litigation in the Circuit Court of St. Louis County, Missouri.

11.5 Cost of Dispute Resolution The cost of any mediation proceeding shall be shared equally by the parties participating. The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by a dispute resolution procedure designated in the Subcontract Documents shall be entitled to recover from the other party those reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such dispute resolution process after direct discussions and mediation.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 Severability The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

12.2 Titles The titles given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

12.3 Governing Law All matters relating to the validity, performance, interpretation or construction of this Agreement, or the breach of this Agreement, shall be governed by the law in effect at the location of the Project.

12.4 Joint Drafting The parties expressly agree this Agreement was subject to negotiation and Subcontractor had the opportunity to obtain the assistance of counsel in reviewing its terms prior to execution and this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

12.5 Other Provisions and Documents If there are other provisions and documents applicable to the Subcontract Work they are set forth in Exhibit H.

ARTICLE 13

SCHEDULE OF EXHIBITS TO THE AGREEMENT

The following Exhibits are attached to and are a part of this Agreement.

Exhibit A: The Subcontractor's Scope of Work, including alternative or unit prices

Exhibit B: Insurance Requirements

Exhibit C: Contractor's Project Rules and Regulations

Exhibit D: List of Drawings, Specifications and Addenda

The Subcontract Documents are identified in Article 3.4

Exhibit E: National Maintenance Agreement

Exhibit F: Schedule of Work

Exhibit G: Performance and Payment Bond Forms

Exhibit H: Subcontractor Safety Information Form

This Agreement is entered into as of the date entered in Article 1.

SUBCONTRACTOR

ATTEST: BY: _____

_____ **Print Name:** _____

Print Title: _____

Designate type of organization: ( ) Corporation ( ) Partnership ( ) Sole Proprietorship ( ) Other.
If Other please designate what type of organization [_____] organized in the State of _____
with its principal place of business at _____.

ALBERICI CONSTRUCTORS, INC.

ATTEST: BY: _____

_____

Print Name: **James E. Frey**

Print Title: **Authorized Representative**