

**ALBERICI CONSTRUCTORS, INC. DBA HILLSDALE FABRICATORS
SERVICES SUBCONTRACT AGREEMENT**

This Agreement is entered into this DAY day of MONTH in the year 20XX by and between **ALBERICI CONSTRUCTORS, INC. DBA HILLSDALE FABRICATORS**, 2150 Kienlen Avenue, St. Louis, MO 63121, referred to in this Agreement as the **Contractor**, and the

SERVICES SUBCONTRACTOR: _____

PROJECT: _____
NUMBER: _____

OWNER: _____

ARCHITECT/ENGINEER: _____

PRIME CONTRACTOR: _____

Notice to the parties shall be given at the above addresses.

- 1. SERVICES** The Services Subcontractor shall perform the Services for the Project set forth in Exhibit A in accordance with applicable laws, regulations and professional standards.
- 2. TEAM RELATIONSHIP** The Contractor and the Services Subcontractor agree to proceed with the performance of the Services required for the Project on a basis of mutual trust, good faith, and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient and economical manner. This Paragraph shall not be construed to create a fiduciary relationship between the Contractor and the Services Subcontractor.
- 3. EXTENT OF AGREEMENT** This Agreement represents the entire and integrated agreement between the Contractor and the Services Subcontractor and supersedes all prior negotiations, representations and agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Contractor and Services Subcontractor and not for the benefit of any third party except to the extent expressly provided in this Agreement. This Agreement includes (a) the agreement between the Prime Contractor and Contractor covering the Work (the "Prime Contractor-Contractor Agreement"), (b) the agreement between the Prime Contractor and the Owner (the Owner-Prime Contractor Agreement"), (c) all change orders, construction change directives and modifications to this Agreement, the Prime Contractor-Contractor Agreement, or the Owner-Prime Contractor Agreement, or any of them, and (d) 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 Prime Contractor-Contractor Agreement and Owner-Prime Contractor Agreement. Services Subcontractor stipulates that it has received, to the extent Services Subcontractor desires, prior to the execution of this Agreement, copies of all of the referenced documents.
- 4. COMPENSATION** As full compensation for the Services provided under this Agreement, Contractor shall compensate the Services Subcontractor on the following basis: XXXXXXXXXX
- 5. INSURANCE** Before commencing the performance of its Services, and as a condition of payment, the Services 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 Services 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. The Services Subcontractor shall maintain at least the limits of liability in a company satisfactory to the Contractor as set forth in Exhibit B.
- 6. INDEMNITY** To the fullest extent permitted by law, the Services Subcontractor shall defend, indemnify and hold harmless the Contractor to the same extent Contractor is obligated to defend, indemnify and hold harmless the Owner and the Prime Contractor. In the absence of such Owner-required defense and indemnification, the Services Subcontractor shall defend, indemnify and hold harmless the Contractor, the Contractor's other subcontractors, the Architect/Engineer, the Owner, the Prime Contractor and their agents, consultants, members and employees (the Indemnitees) from and against all claims, damages, losses 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 Services to the extent of the negligent acts or omissions by, or the fault of, the Services Subcontractor, its 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 Services 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

- 7. INFORMATION** The Contractor shall provide the Services Subcontractor with the Project documents as listed in Exhibit D and/or other Project information requested in writing by the Services Subcontractor. The Contractor shall provide timely notice to the Services Subcontractor of changes made to the documents, plans or the Project.
- 8. ACCESS** The Contractor shall provide the Services Subcontractor with reasonable access to the Project site so as to assist the Services Subcontractor in the performance of its Services.
- 9. REPRESENTATIVES** Contractor's Representative is XXXXXXXXXXXX. Services Subcontractor's Representative is XXXXXXXXXXXX. Each Representative shall have authority to bind its respective party to all decisions and actions required under this Agreement.
- 10. TIME** Time is of the essence for both parties. The Services Subcontractor shall provide all Services in conformance with the most recent Project schedule.
- 11. DELAYS** If the progress or completion of the Project is delayed by reason of any fault, neglect, error or omission of the Services Subcontractor, the Services Subcontractor shall compensate the Contractor for and indemnify it against all costs, expenses, liabilities or damages which may accrue as a result of such delay. In addition, the Services Subcontractor shall provide Services at its own cost, including overtime costs required to make up lost time in the schedule delays plus expenses as are necessary to make up for time lost by the Contractor because of such delay.
- 12. PAYMENTS** The Services Subcontractor shall submit to Contractor monthly applications for payment for Services with sufficient supporting detail. Contractor shall pay approved amounts to Services Subcontractor within thirty (30) days of receipt of application of payment. Contractor shall have the right to withhold from any payment due or to become due an amount sufficient to protect Contractor from loss that may result from Services Subcontractor being in default of this Agreement. Payment of the amount withheld shall be made when the grounds for withholding have been removed.
- 13. SAFETY** The Services Subcontractor has established and maintains written programs and procedures for the safety of its employees, consultants and contractors, and specifically disclaims any authority over or responsibility for the safety of personnel engaged in performance of the Services at the Project site except that of the Services Subcontractor's employees, consultants and contractors. While at the Project site, the Services Subcontractor's employees, consultants and contractors shall comply with all safety requirements and procedures of the Contractor. 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 applicable safety requirements.
- 14. WAIVER OF CONSEQUENTIAL DAMAGES** To the extent the agreement between the Prime Contractor and the Contractor provides for a mutual waiver of consequential damages by the Prime Contractor and the Contractor, the Contractor and the Services Subcontractor waive claims against each other for any consequential damages that may arise out of or relate to this Agreement. Similarly, the Services Subcontractor shall obtain from its consultants and contractors mutual waivers of consequential damages that correspond to the Services Subcontractor's waiver of consequential damages herein. To the extent applicable, this mutual waiver applies to consequential damages due to termination by the Contractor or the Prime Contractor in accordance with this Agreement or the agreement between the Prime Contractor and the Contractor.
- 15. 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 Services 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.
- 16. WORK CONTINUATION AND PAYMENT** Unless otherwise agreed in writing, the Services Subcontractor shall continue the Services during any dispute resolution proceedings. As the Services Subcontractor continues to perform, the Contractor shall continue to make payments in accordance with this Agreement.
- 17. MULTIPARTY PROCEEDING** To the extent permitted by Contract 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 Services Subcontractor involve in whole or in part disputes between the Contractor and the Prime Contractor, disputes between the Services Subcontractor and the Contractor shall be decided by the same tribunal and in the same forum as disputes between the Contractor and the Prime Contractor.
- 18. DISPUTES BETWEEN CONTRACTOR AND SERVICES SUBCONTRACTOR** In the event the provisions for resolution of disputes between the Contractor and the Prime Contractor contained in the Contract Documents do not permit consolidation or joinder with disputes of third parties, such as the Services Subcontractor, resolution of disputes between the Services Subcontractor and the Contractor involving in whole or in part disputes between the Contractor and the Prime Contractor shall be stayed pending conclusion of any dispute resolution proceeding

between the Contractor and the Prime Contractor. At the conclusion of those proceedings, disputes between the Prime Contractor and the Contractor, to the extent not resolved in the proceedings between Owner and Contractor, shall be submitted again to mediation. Any disputes not resolved by mediation shall be decided by litigation in the Circuit Court of St. Louis County, Missouri.

19. 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 Contract 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.

20. TERMINATION BY EITHER PARTY Either party may terminate this Agreement upon seven (7) days' written notice if the other party materially breaches its terms through no fault of the initiating party.

21. TERMINATION FOR CONTRACTOR'S CONVENIENCE Upon seven (7) days' written notice, the Contractor may, without cause, terminate this Agreement with the Services Subcontractor. If this Agreement is so terminated, the Services Subcontractor may recover from the Contractor to the extent that Prime Contractor pays the Contractor for the Services Subcontractor's Services.

22. JOINT DRAFTING The parties expressly agree this Agreement was subject to negotiation and Services 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.

23. GOVERNING LAW The Agreement shall be governed by the law in effect at the location of the Project.

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

- Exhibit A:** The Service Subcontractor's Scope of Work, including alternative or unit prices
- Exhibit B:** Insurance Requirements
- Exhibit C:** Contractor's Project Rules and Regulations
- Exhibit D:** Drawings, Specifications, and Addenda
- Exhibit E:** National Maintenance Agreement / Project Labor Agreement
- Exhibit F:** Schedule of Work
- Exhibit G:** Performance and Payment Bond Forms
- Exhibit H:** Certification of Non-Segregated Facilities
- Exhibit I:** Tax Exemption
- Exhibit J:** Subcontractor Safety Information
- Exhibit K:** Addendum for Design-Build Subcontracts
- Exhibit L:** Immigration Compliance
- Exhibit M:** Federal Government Terms and Conditions
- Exhibit N:** Lean Construction Addendum
- Exhibit R:** Release of Retention
- Exhibit X:** Special Provisions

**ALBERICI CONSTRUCTORS, INC. DBA HILLSDALE
FABRICATORS**

By: _____
Name: _____
Title: _____
Date: _____

SERVICES SUBCONTRACTOR NAME

By: _____
Name: _____
Title: _____
Date: _____