



EADS DISTRIBUTION LLC, dba TSI SERVICES
SUBCONTRACT AGREEMENT
TERMS AND CONDITIONS
Document No. JKW-021116-SCA

ARTICLE 1. COMMENCEMENT AND PROGRESS OF WORK

- 1.1 Time Is Of The Essence Of This Agreement - Subcontractor agrees to comply with and perform the Work of this Agreement to the full and complete satisfaction of the Contractor and the Owner, according to the requirements of the Contractor's construction schedule as Contractor may from time to time determine and submit to the Subcontractor. Within three (3) calendar days after being notified by Contractor, Subcontractor shall commence actual construction Work hereunder at such point or points at the site of the Work, or to deliver such needed materials and supplies as and when required to such storage or Work areas, or both, as Contractor may designate and to thereafter continue diligently in the performance of the Work.
- 1.2 Upon request, the Subcontractor shall prepare and submit to the Contractor for approval a practicable progress schedule in the form requested to meet the dates as shown by Contractor's current construction schedule and showing the order in which Subcontractor proposes to carry on the Work and the date on which it will start the salient features (including drawings, procurement of materials, plant and equipment and the contemplated dates for completing the same). The Subcontractor shall enter on the schedule the actual progress at the end of each month or at such intervals as directed by Contractor, and submit two (2) copies to the Contractor's Project representative.
- 1.3 Subcontractor shall keep Contractor fully and formally advised at all times of any pending or possible delays in deliveries and/or Work accomplished which could impact immediate or long range scheduling of this Project.
- 1.4 If Subcontractor falls behind the progress schedule, Subcontractor shall take such steps as may be necessary to improve the subcontract progress, and Contractor may require Subcontractor to increase the number of shifts and/or overtime operations, days of Work, and/or increase equipment and/or tools being used, and to submit for approval such supplementary schedule or schedules as may be necessary to demonstrate the manner in which the agreed rate of progress will be regained.
- 1.5 The Subcontractor agrees to submit all shop or fabrication drawings, design, and performance data, tests, samples, templates, operating and/or maintenance manuals; together with any and all other data related to the materials, methods, and equipment used or proposed for use in the performance of this Agreement promptly and/or as directed by Contractor or required by the Prime Contract, and in sufficient number to provide adequate information to all parties requiring same. Approval of any of the foregoing by the Contractor or the Owner shall under no circumstances alter the requirements of the subcontract documents for quality, quantity, finish dimension, design, and configuration; nor shall such approval constitute acceptance by the Contractor of any method, material, or equipment not ultimately acceptable to the Owner.
- 1.6 In the event any acts or omissions of Subcontractor delay Contractor in meeting its own construction schedule or that of any other subcontractor in the performance of the Work under the Prime Contract resulting in penalties, liabilities or damages under the Prime Contract, Subcontractor agrees to indemnify and hold Contractor harmless from any penalties, liabilities, and/or damages, and to promptly pay to Contractor any such costs, penalties, liabilities or damages so incurred.
- 1.7 Violation by Subcontractor of any of the provisions of this Article shall be grounds for the Contractor to exercise the rights provided by Article 10 hereof.

ARTICLE 2. BASIS AND SCOPE OF PAYMENT

Subcontractor understands and agrees that all payments to the Subcontractor for the Work are to be made from payments made by Owner from time to time to Contractor in respect of the Work performed by Subcontractor. Payments, except as elsewhere herein specified, will be made to the Subcontractor for Work actually performed and completed, as measured and certified by the Owner or by the Contractor, within ten (10) days after receipt by Contractor of payment from Owner for the Work of Subcontractor, provided Contractor has received all required documentation from Subcontractor, as provided in Article 3 below. Subcontractor expressly agrees that payment by Owner is an express condition precedent to Contractor's obligation to pay Subcontractor and Subcontractor assumes the risk of nonpayment or delayed payment by Owner. Nothing contained herein shall be construed to limit Subcontractor's lien rights or legal right to recover unpaid sums from the Owner.

ARTICLE 3. PARTIAL PAYMENT(S)

Contractor and/or Owner shall retain from progress or other payments hereunder ten percent (10%) of the amount due until final acceptance of the Work by the Owner, and until ten (10) days after Contractor's receipt of final retention payment from Owner. Upon timely application, partial payments for Work performed under this Agreement will be made by Contractor as and when it is paid therefore by Owner to Contractor (provided Subcontractor has complied with all other requirements to receive payment), and will equal the value of the Work done by Subcontractor (see Article 2 above) less the ten percent (10%) retainage, and less the sum of previous payments; provided, however, that if Subcontractor is indebted to Contractor or anyone else for cash advances, supplies, materials, equipment, rental, or other charges, the amount of such indebtedness may be deducted by Contractor from any payment or payments made under this provision; and provided, further, that the Contractor may from time to time require and Subcontractor shall promptly provide a statement in writing setting forth what amounts, if any, are due or payable by Subcontractor to third parties for labor, materials, taxes, equipment, and/or supplies in connection with, or arising out of the performance of Subcontractor. Subcontractor further agrees to make available to Contractor throughout the course of the Project such financial records and information as are reasonably necessary, in Contractor's discretion, to evaluate Subcontractor's ability to continue to perform the Work and meets its obligations as set forth in this Agreement. Contractor may withhold, or may pay directly or by joint check, all upon the account of Subcontractor, such sums as the Contractor reasonably may determine are necessary to secure and protect the Contractor or the Owner from claims or liens that may be asserted by said third parties.

ARTICLE 4. FINAL PAYMENT

4.1 Upon the completion of the Prime Contract and payment therefore in full by the Owner, Contractor shall pay Subcontractor the remaining amount due Subcontractor under this Agreement, including the retainage amount. All prior partial payments shall be subject to correction in the final payment.

Final payment as herein provided shall release the Contractor from any further obligations whatsoever in respect to this Agreement. Subcontractor shall, as a condition precedent to final payment, and before payment of said remaining percentages, execute and deliver to Contractor a full and valid release and complete discharge of and from any and all claims and demands whatsoever for all matters growing out of, or in any manner connected with or founded upon, this contract or the Work contemplated thereby.

4.2 It is understood and agreed that Subcontractor shall receive no compensation for any Work done by it which is not approved and accepted by Owner (see Article 2 above).

4.3 Pertaining to final closeout requirements, no payments beyond 90% will be released until all warranties, Operations and Maintenance Manuals, extra material, and any other special requirements have been submitted as required.

ARTICLE 5. SUBCONTRACTOR'S PRE-CONTRACT INQUIRY

Subcontractor acknowledges responsibility, prior to entering this Agreement, to investigate and familiarize itself with (i) the Prime Contract, (ii) all laws, ordinances and regulations applicable to Work under this Agreement, (iii) with the availability and adequacy of personnel, workmen, material, supplies, equipment, power, utilities, fuel, etc., and, with respect to each of the foregoing, the cost and suitability thereof, (iv) with the prevailing wage scales, union scales, benefits and working conditions, craft jurisdictions, craft area practices, existing labor agreements, (v) with all options, site conditions, considerations and restrictions, lease agreements, royalties, underground conditions, prevailing weather and climatological conditions and history, and (vi) any other factors which may affect Subcontractor's Work under this Agreement. Subcontractor hereby warrants and agrees that it has investigated all such matters and familiarized itself therewith to the extent that it deems necessary. Subcontractor further agrees that Contractor shall not be liable to Subcontractor on any claim for additional payment or additional time or any claim whatsoever if such claim directly or indirectly results from Subcontractor's failure to investigate and familiarize itself sufficiently with the conditions under which this Agreement is to be performed, including the foregoing but without restriction thereto, or from any misunderstanding thereof on the part of Subcontractor.

ARTICLE 6. CLAIMS FOR EXTRA WORK

- 6.1 The Contractor will pay for extra Work performed and materials furnished by Subcontractor, only with prior written authorization by Contractor. Any claim of Subcontractor for extra Work and materials not so pre-authorized shall be deemed waived; and any claim for other damages of any nature whatsoever, shall be deemed waived by Subcontractor unless written notice thereof is given to Contractor within ten (10) days after the date of its origin.
- 6.2 The Contractor agrees to forward to Owner any claims of the Subcontractor arising out of Owner-ordered changes, but is not obligated to Subcontractor for any amounts greater than that allowed by and paid by the Owner in compensation for such changes. Subcontractor shall not deal directly with Owner.

ARTICLE 7. STOPPAGE OR SUSPENSION OF WORK

- 7.1 If the Owner for any cause stops or suspends Work under the Prime Contract, or the Prime Contract between Owner and Contractor is canceled in whole or in part, then Subcontractor shall immediately stop or suspend Work hereunder and, after and only in the amount and to the extent that Contractor has been paid shall Subcontractor be paid for such Work.
- 7.2 In the event that Contractor's Work is terminated for convenience by the Owner, then an equitable settlement for Subcontractor's Work will be made as provided in the Prime Contract. Contractor may also terminate Subcontractor's Work at any time in whole or from time to time in part for Contractor's convenience. If Subcontractor's Work is terminated for convenience of Contractor, Subcontractor shall suspend its Work on the date and to the extent specified by Contractor, terminate all agreements relating to that portion of its Work being terminated and, if requested by Contractor, assign to Contractor Subcontractor's rights therein, provide lien and bond claim releases from subcontractors, suppliers and laborers affected by the termination, and deliver to Contractor all documents and property which Subcontractor would be required to deliver if Subcontractor had completed its Work, including any equipment provided by Contractor or rented by Contractor from third parties. If Subcontractor's Work is terminated for convenience, in whole or in part, Subcontractor shall be entitled to payment at the subcontract price(s) (not in quasi contract or *quantum meruit*) for only that portion of its Work which it performed, less applicable back charges due Contractor. Subcontractor shall not be entitled to payment for Work not performed or to overhead allocable or profit anticipated on that portion of its Work not performed.

- 7.3 No extension of time for completion will be made or compensation paid in any event for delays or suspension of Work caused by the fault or negligence of the Subcontractor or its subcontractors or suppliers.

ARTICLE 8. CLAIMS OF SUBCONTRACTOR; DISPUTE RESOLUTION

- 8.1 If Subcontractor shall claim that it is entitled to additional compensation or damages by reason of any act or omission of Owner or for which Owner is responsible or any delay caused by an act or omission of Owner, Subcontractor shall, promptly and within time to allow Contractor to comply with any applicable limits in the Prime Contract, submit such claims in writing to Contractor, and Contractor will on behalf of Subcontractor submit the claim to Owner.
- 8.2 Any claim by Subcontractor involving the acts or omissions of Owner or its agents or representatives, or that otherwise are the responsibility of Owner under the Prime Contract, will be advanced by Contractor at its sole discretion in accordance with the dispute resolution procedure in the Prime Contract. If Contractor decides in good faith not to proceed with such claim, Subcontractor shall be entitled to proceed with its claim directly against Owner or its agents, in accordance with the dispute resolution procedure in the Prime Contract, at the sole cost and expense of Subcontractor. If Contractor elects to advance Subcontractor's claim, Subcontractor's right of recovery on such claim shall be limited solely to that dollar amount and other relief, which is recovered by Contractor on behalf of Subcontractor from Owner. Subcontractor agrees to be bound by the procedure and final determinations as specified in the dispute resolution procedure in the Prime Contract, and agrees that it will not take, or will suspend, any other action or actions with respect to any such claims and will pursue no independent litigation with respect thereto, pending final determination under such dispute resolution procedure. Contractor shall not be liable to the Subcontractor for any monies or other relief except those granted to Contractor by Owner for the benefit of Subcontractor. Monies recovered from Owner on behalf of Subcontractor shall be paid by Contractor to Subcontractor. Subcontractor hereby agrees to make no claim to further payment beyond the amount recovered from Owner arising out of the act, errors, or omissions of Owner or its agents or representatives, except to the extent that Contractor may receive funds from Owner on behalf of Subcontractor, less costs and expenses incurred by Contractor in prosecuting such claims.
- 8.3 If a dispute arises out of or relating to this Agreement that does not involve the acts or omissions of the Owner or its agents or representatives, the parties shall first endeavor to settle the dispute through direct discussion. Disputes not resolved by direct discussion shall be submitted to mediation pursuant to the Construction Industry Mediation Procedures of the American Arbitration Association. The parties shall select a mediator within fifteen (15) days of a written request for mediation by either party and shall bear the cost of mediation equally. Engaging in mediation is a condition precedent to any form of binding dispute resolution.
- 8.4 If direct discussions and mediation do not successfully resolve the dispute referred to in Section 8.3 above, the parties agree to submit the dispute to binding arbitration pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association. The arbitrator's decision shall be in accordance with the facts and applicable law and the arbitrator shall issue a reasoned decision on all contested issues. The arbitrator's decision shall be final and binding. The prevailing party in any dispute shall be entitled to recover all attorneys' fees, expert fees, and costs such party incurred relating to the dispute, subsequent to the mediation.
- 8.5 If the dispute involving Contractor and Subcontractor relates to a dispute with others (including Owner, Contractor, or any other party concerning or in any way relating to responsibility under this Agreement) which involves a common question of fact or law concerning or in any way relating to responsibility under this Agreement, any dispute relating to the Work required or alleged to be required herein, this Agreement, or the Subcontractor, then to the extent not prohibited by their contracts with others, the parties agree that all claims and disputes shall be heard in a consolidated or joint proceeding.

8.6 No dispute shall interfere with the progress of construction for the Project, and Subcontractor shall proceed with its Work as directed.

ARTICLE 9. DELAYS AND EXTENSIONS OF TIME

- 9.1 If Subcontractor's performance of this Agreement is delayed or interfered with by the acts of the Owner, Contractor, or other subcontractors, Subcontractor may request an extension of the time, as hereafter provided, but only upon the same terms and conditions and only to the extent actually allowed to Contractor by Owner, and Subcontractor shall not be entitled to any increase in the subcontract price or to damages or additional compensation as a consequence of such delay or interference, or for acceleration relating to any such delay or interference, except to the extent that the Prime Contract entitles the Contractor to additional compensation for such delays and then only to the extent of any amounts that the Contractor may, on behalf of the Subcontractor, recover from the Owner for such delays.
- 9.2 No allowance for an extension of time, for any cause whatsoever, shall be claimed by, or made to, the Subcontractor unless the Subcontractor shall have made written request upon the Contractor for such extension within five (5) working days after the cause of such extension occurred, or, if the Prime Contract provides for a shorter period, within sufficient time to permit the Contractor to give notice to the Owner within the time allowed by the Prime Contract for such notice. However, no extension of time shall be made to Subcontractor for delay by the Subcontractor in preparing drawings or in securing approval by the architect or engineer when such drawings are not properly prepared or when the Subcontractor by the exercise of reasonable diligence and judgment, could have anticipated and avoided the delay.
- 9.3 If Owner should assess actual or liquidated damages or penalties against Contractor, then Subcontractor shall be responsible for such portion of the assessment as may be directly attributable to it, regardless of the cause of delay.

ARTICLE 10. COMPLETION OF WORK BY CONTRACTOR UPON SUBCONTRACTOR DEFAULT

If Subcontractor shall fail to commence the Work within the specified time, or to prosecute said Work continuously with sufficient workmen and equipment to assure its completion within the time herein specified for completion, or to perform said Work according to the provisions of the Prime Contract, or if for any other cause or reason whatsoever Subcontractor shall fail to carry on the Work in a reasonably acceptable manner, then the Contractor may elect to give notice in writing of such default, specifying the same. If the Subcontractor, within a period of seventy-two (72) hours after said notice, not including Saturday or Sunday, shall not proceed in accordance therewith, then the Contractor shall have full power and authority, without process of law and without violating this Agreement, to take the prosecution of all or part of the Work out of the hands of the Subcontractor and complete it with its own forces, or contract with other parties for its completion, or use such other measures as in Contractor's opinion are necessary for its completion, including the use of the equipment, plant and other property of Subcontractor at the Project location at no cost to the Contractor for the use of the same. Neither by the taking over of the Work nor by its completion in accordance with the terms of this provision shall Contractor forfeit its right to recover damages from Subcontractor or from Subcontractor's surety for failure to complete or for delay in such completion. Should the expenses incurred by Contractor in taking over and completing the Work be less than the sum that would have become payable under this Agreement if said Work had been completed by Subcontractor, then Subcontractor shall be entitled to the difference. Should the expense exceed the said sum, Subcontractor and Subcontractor's surety shall be liable to the Contractor for the amount of such excess. Upon the taking over of the Work by Contractor as herein provided for, no further payment will be made to Subcontractor until the Work is completed, and any sums due or that may become due to Subcontractor under this Agreement will be withheld and may be applied by the Contractor to payments for labor, materials, supplies and equipment used in the prosecution of the Work, for the payment of rental charges on the equipment used therein, and to the payment of any excess cost to Contractor of completing the said Work.

ARTICLE 11. RELATIONSHIP OF THE PARTIES

Subcontractor represents that it is fully experienced and properly qualified as an expert to perform the class or Work provided for herein and that it is properly equipped, organized and financed to handle such Work. Subcontractor shall finance its own operations hereunder, and agrees that it is, and shall operate as, an independent contractor and not as an agent of Contractor. The relationship of Contractor and Subcontractor shall in no event be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties. Any persons employed or engaged by Subcontractor in connection with the performance of the Work shall be Subcontractor's employees or contractors. Subcontractor assumes responsibility for the actions of its employees and contractors under this Agreement and will be solely responsible for their supervision, daily direction and control, wage rates, withholding income taxes, providing unemployment and disability benefits, and the manner and means through which the work under this Agreement will be accomplished.

ARTICLE 12. COOPERATION WITH CONTRACTOR AND OTHER SUBCONTRACTORS

The Work requires complete integration with work to be performed by Contractor and its other subcontractors as to time, location and schedules. Subcontractor shall fully cooperate with Contractor and others engaged in the work on the Project, and shall not interfere with the performance of such work. Further, Subcontractor shall coordinate its Work hereunder with the work of Contractor and of others so that the work on the entire Project may be performed with the utmost speed consistent with good industry practice, even at increased expense to Subcontractor, without Contractor incurring liability therefore.

ARTICLE 13. INSPECTION AND CORRECTION; WARRANTY

The materials and Work shall at all times be subject to inspection by Owner and Contractor, and their representatives. Subcontractor shall at all times provide all safe and necessary facilities for such inspection. Owner and Contractor shall be afforded full and free access to the shops, factories and places of business of Subcontractor and its subcontractors and suppliers for the purpose of inspection and in order to determine the general conditions and progress of the Work. Subcontractor shall promptly furnish to Contractor all samples, drawings and lists required of it in connection with the Work, but approval thereof shall not relieve Subcontractor of responsibility for complying with requirements and conditions of this Agreement. If any part of the Work, or any material supplied by Subcontractor, is determined by Owner or Contractor to be improper or defective, either during the actual performance of Work under the Prime Contract, or during any warranty period provided in the Prime Contract (or, if no warranty period is so provided, then within one (1) year after completion of Subcontractor's Work), Subcontractor shall, immediately upon being notified in writing by Contractor to do so, proceed to remove, dispose and replace the same at its own cost and expense. If Subcontractor shall fail to replace or correct defective material or workmanship promptly and completely, Contractor, at its option, may replace or correct the same. Subcontractor agrees to pay the Contractor all costs, expenses (including attorneys' fees), liabilities and consequential damages of Contractor in connection with said replacement or corrections, regardless of whether said replacements or corrections are removed, disposed of and replaced by Subcontractor or Contractor.

ARTICLE 14. CLEANUP | RECYCLING

14.1 Subcontractor shall perform its Work as herein required so that the Project premises shall be neat, orderly and free from debris at all times. Upon termination or completion of the Work, [Subcontractor agrees to return all equipment provided by Contractor, including any equipment rented by Contractor from third parties. In addition,](#) Subcontractor agrees to remove all unused materials and all equipment, utilities and facilities furnished by Subcontractor, to clean up all refuse and debris, and to leave the premises clean, orderly and in good condition. Upon twenty-four (24) hours written notice of failure to comply with these provisions, the Contractor may elect to perform such cleanup of the Subcontractor's refuse, debris, etc., as the Contractor reasonably deems necessary and the cost of the same will be charged to Subcontractor.

14.2 Subcontractor shall assist the Contractor in implementing a Project recycling program. This would include but not be limited to segregating the waste materials generated from its operation into containers as required.

ARTICLE 15. PUBLICITY RESTRICTIONS AND CONFIDENTIALITY REQUIREMENTS

No public news release, advertising, or other disclosure of Confidential Information may be released without Contractor's written approval. "Confidential Information", as used herein, shall mean all Project information, including but not limited to, business plans, customer lists, prospective customers, leases, financial statements, Project lists (current and past) and devices disclosed or made available to Contractor, its subcontractors and suppliers. Examples of this restriction are the use of the Project in advertising, internal or external newsletters, brochures, and news releases to media sources of any kind. To request approval to utilize the Project for such purposes, Subcontractor must provide a complete copy of the proposed communication, and a description of the uses and outlets for which it is intended, to Contractor. Approval requests will be promptly processed. Subcontractor acknowledges and agrees that Confidential Information is confidential, proprietary to and a valuable trade secret and that any disclosure or unauthorized use thereof will cause irreparable harm and grave loss. Subcontractor agrees not to disclose any such Confidential Information without prior permission from Contractor. The restrictions and obligations of this Article shall survive any expiration, termination or cancellation of the Agreement and shall continue to bind all parties, their successors and assigns.

ARTICLE 16. SUBORDINATION OF LIEN RIGHTS

To the extent and only to the extent required by the Prime Contract and/or the underlying construction financing agreements to which the Project is subject, Subcontractor expressly subordinates all contractual, constitutional and statutory mechanics' and materialmen's liens to which the Subcontractor may be or may become entitled to all liens and security interests securing the loan used to finance construction of the Project and expressly waives any right to remove any removable improvements from the Project. This clause is intended solely to establish the priority of potential future liens and shall not be construed to limit the Subcontractor's lien rights as afforded under applicable law.

ARTICLE 17. RESPONSIBILITY FOR THE WORK

- 17.1 Subcontractor shall be responsible for, and shall bear any and all risk of loss or damage to its Work, materials supplied and Subcontractor's property and equipment, until final acceptance of its Work.
- 17.2 Subcontractor shall be responsible for any and all damages to the work of other parties on the Project, or any third party property, caused by Subcontractor's Work or Subcontractor's personnel.

ARTICLE 18. UNEMPLOYMENT INSURANCE, TAXES AND UNION BENEFITS

Subcontractor has the status of an employer as defined by the Unemployment Compensation Act of the state in which this contract is to be performed, and the United States. Subcontractor will withhold from its payrolls as required by law or government regulation and shall have full and exclusive liability for the payment of any and all taxes and contributions for unemployment insurance or workmen's compensation, old age retirement benefits, life pensions and annuities, health and welfare, which may now or hereafter be imposed by the United States or any state, or any labor agreement to which Contractor is a part, whether measured by the wages, salaries or other compensation paid to persons employed by Subcontractor or otherwise, for the Work required to be performed hereunder. Subcontractor shall comply with all federal and state laws on such subjects and all rules and regulations promulgated thereunder, and shall maintain suitable forms, books and records and shall indemnify and defend and save and hold Contractor harmless against any liability for the payment of any and all such taxes and contributions, or penalties arising by reason thereof. Subcontractor shall also pay any and all taxes, excises, assessments, penalties or other charges, levied by any governmental authority on or because of the Work to be done hereunder, or any

equipment, supplies, services or materials used or supplied in the performance thereof and shall indemnify and defend and save and hold Contractor harmless against any liability for any such taxes, assessments or charges.

ARTICLE 19. LABOR CONDITIONS & EMPLOYMENT PRACTICES

19.1 Contractor is an Equal Opportunity Employer and require full compliance with all applicable federal, state, and local laws and regulations.

Subcontractor shall, to the extent permissible under federal law and any applicable state laws, comply with and be bound by such terms and conditions of Contractor's labor agreements as are applicable to the Work to be done hereunder, including without limitations, the terms and provisions of any such agreements providing for the assignment of Work or the settlement of jurisdictional disputes and the payment of wages and fringe benefits provided for in Contractor's labor agreement.

19.2 Subcontractor shall comply with 41 CFR 60.4.2(d) (Executive Order No. 11246), Executive Order No. 11701, the Vietnam Era Veteran's Readjustment Assistance Act of 1972 and the Rehabilitation Act of 1973, and all other orders, rules and regulations promulgated thereunder (included but not limited to 41 CFR Part 60-1, et al., 41 CFR Part 60- 250, et al. and 41 CFR Part 60-741), all as same may have been or may be amended. The "Equal Opportunity Clause" of 41 CFR Section 60-250.4 and the "Affirmative Action for Handicapped Workers" clause of 41 CFR Section 60-741.4 and 60-741.5 are incorporated herein by this reference. Subcontractor certifies that segregated facilities (within the meaning of 41 CFR Section 6-1.8) are not and will not be maintained or provided for Subcontractor's employees and that Subcontractor will not permit its employees to perform any work at any location under Subcontractor's control where segregated facilities are maintained. Subcontractor shall obtain a similar certification from any of its subcontractors or suppliers as required by 41 CFR 60-1.8. Subcontractor shall pass this requirement on in full to its subcontractors and suppliers, without exception,

19.3 Subcontractor shall, if requested to do so by Contractor, remove from the Project premises any employee whom Contractor reasonably determines to be unacceptable.

19.4 The following applies only in the event that this Agreement is based on the Subcontractor being required to sign a "one job" union agreement to comply with Prime Contract requirements. The original Subcontract amount includes a mutually agreed "Not to Exceed" allowance (as called out in the Scope of Work above) for the actual costs incurred by Subcontractor due to the requirements of the "one job" union agreement (union benefits actually paid, increased wages actually paid, etc.). At completion and final acceptance of Work, Subcontractor shall cooperate with Contractor in the reconciliation of this allowance based on actual costs incurred, complete with all appropriate documentation substantiating costs incurred, accompanied by a fully executed copy of the "one job" union agreement.

19.5 Subcontractor shall comply with any Executive Order, law or statute requiring it to utilize "E-Verify" to electronically verify the employment eligibility of its employees, whether stationed working on this Project or not. It is the Subcontractor's responsibility to ascertain the applicability of any such Executive Order, law or statute to its Work under this Agreement.

ARTICLE 20. BONDS

If requested, Subcontractor shall, prior to commencing the Work, furnish a performance and payment surety bond or bonds with companies satisfactory to Contractor, in form and amount as specified in this Agreement or the Prime Contract. No change, alteration, or modification in or deviation from this Agreement, its terms, conditions, plans or specifications, or in the manner, time or amount of payment as provided herein, whether or not made in the manner as herein provided, shall release or exonerate, in whole or in part, any surety on any bond given in connection with this Agreement. The requirement for a surety bond is a material condition of this Agreement. Failure to provide such bond is justification for default.

ARTICLE 21. LAWS AND REGULATIONS

- 21.1 Subcontractor, its employees and representatives shall at all times comply with all applicable laws, ordinances, statutes, rules and regulations, federal and state, county and municipal, and particularly those relating to wages, hours, fair employment practices, anti-harassment, non-discrimination, safety and working conditions.
- 21.2 Subcontractor shall procure and pay for all permits, licenses and inspections required by any governmental authority for any part of the Work hereunder and shall furnish any bonds, security or deposits required by such authority to permit performance of the Work.

ARTICLE 22. PATENTS AND ROYALTIES

Subcontractor shall indemnify and defend and save harmless Owner and Contractor, and each of them, from and against all claims, royalties, damages, liabilities, costs and expenses of whatsoever kind or nature (including attorney fees) in any manner resulting, or claimed to result from any alleged infringement of any patents or for the misuse of any patented article by Subcontractor, its representatives, employees or others acting on its behalf.

ARTICLE 23. DESIGN BUILD WORK

If and to the extent the Work calls for or requires any design or engineering to be provided by or performed by Subcontractor, Subcontractor acknowledges it has full responsibility for the adequacy, accuracy and conformance of such design or engineering work and that the Contractor is entitled to rely thereon. Subcontractor warrants that all such design and engineering provided or performed by it shall fully comply with all contract requirements, all codes, laws and regulations, and shall be performed consistent with the highest professional standards. Subcontractor shall reimburse or indemnify, pursuant to the indemnification obligation herein, Contractor for all costs, losses, damages, etc., caused by or resulting from any nonconformity, inadequacy, or inaccuracy, etc., in Subcontractor's design or engineering. Subcontractors who are required by the specifications to furnish engineering drawings and calculations by a qualified licensed professional shall require the licensed design professional to provide Design Errors and Omissions/Professional Liability insurance.

ARTICLE 24. ASSIGNMENT

Any assignment or other transfer of this Agreement, or any portion of the Work, or any amount due or payable hereunder, made by Subcontractor without the prior written consent of Contractor shall be void. Subcontractor agrees that if any portion of the Work covered by this Agreement is further subcontracted, then such sub-subcontractor shall be bound by and observe the provisions of this clause to the same extent as herein required by Subcontractor, and that a copy of this clause imposing such obligations upon the sub-subcontractor shall be included in any further subcontract. Notwithstanding any consent by Contractor, Subcontractor is responsible for the performance or non-performance of any sub-subcontractor and will indemnify, defend and hold harmless Contractor from and against all claims, actions, losses, damages, costs and expenses (including reasonable attorneys' fees) arising from any sub-subcontractor's acts or omissions.

ARTICLE 25. SEVERABILITY

In the event that any provision of this Agreement shall at any time contravene in whole or in part any applicable federal or state law, ruling or regulation, then such provision shall remain in effect only to the extent permitted, and the remaining provision hereof shall remain in full force and effect.

ARTICLE 26. LATENT DEFECTS

Without limitation, Subcontractor shall be responsible for the repair of latent defects in the Work. Subcontractor shall pay for any consequential damages caused by any latent defects in the Work, and shall pay for all costs necessary to repair the work of others caused by uncovering and repairing defective Work of Subcontractor.

ARTICLE 27. COMPLETE AGREEMENT; AMENDMENT

The Agreement and the Prime Contract, represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, written or oral. No verbal agreement with any agent either before or after the execution of this Agreement shall affect or modify any of the terms or obligations herein contained and this contract shall be conclusively considered as containing and expressing all of the terms and conditions agreed upon by the parties hereto. No agents or representatives of either party has authority to make, and the parties shall not be bound by or be liable for any statement, representation, promise or agreement not set forth herein. No changes, amendments or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this Agreement.

ARTICLE 28. INDEMNIFICATION

- 28.1 To the fullest extent permitted by law, Subcontractor agrees to indemnify, defend and hold harmless Contractor and Owner, and the officers, directors, employees, agents, parents, subsidiaries, and affiliates of each of them ("**Indemnified Parties**" or individually, "**Indemnified Party**"), from and against all claims, losses, liabilities, judgments, damages, costs, expenses, demands and suits (including but not limited to fees and expenses of attorneys, experts, consultants, arbitrator's and mediator's fees and arbitration and mediation administrative costs/court costs and fees and all other costs of litigation, arbitration or mediation) arising out of or related to, or alleged to arise out of or be related to the performance, condition or existence of the Work under this Agreement, *provided that* such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury or destruction of real or tangible personal property (other than the Work itself), *but only to the extent* caused by the negligent acts or omissions of Subcontractor, or anyone directly or indirectly employed by Subcontractor or for whose acts Subcontractor may be liable, regardless of whether such claim, damage, loss or expense is caused in part by any Indemnified Party. However, this obligation does not apply to require Subcontractor to indemnify any Indemnified Party where a final non-appealable judicial order or judgment determines that the loss, injury or damage is the result of the sole negligence or willful misconduct of the Indemnified Parties.
- 28.2 In any and all claims against the Indemnified Parties by an employee of Subcontractor, or anyone directly or indirectly employed by Subcontractor or for whose acts Subcontractor may be liable, Subcontractor's indemnification obligations under this Agreement shall not be diminished or limited in any way by any limitation on the amount or type of costs, damages (including any consequential damages waiver or other limitations of liability), compensation, or benefits payable by or for Subcontractor under this Agreement or under any workers' compensation, disability benefit or other employee benefit act.
- 28.3 Subcontractor shall: (i) at its own cost, expense and risk, defend any and all claims, demands and suits defined in this Agreement that may be brought or instituted against any Indemnified Party by any third party, including but not limited to any governmental, state or local agency, or any employee of Subcontractor and any party for whose acts it may be responsible; and (ii) reimburse the Indemnified Parties for any and all legal costs and related expenses incurred by any of them in connection herewith or in enforcing the indemnity granted in this Article 28. Indemnified Parties retain the right to approve counsel to be employed in their defense.

- 28.4 Subcontractor's indemnification obligation shall: (i) survive termination of this Agreement; (ii) extend to claims occurring after termination of this Agreement or completion of the Work; and (iii) not be limited in any manner by Subcontractor's insurance coverage under this Agreement.

ARTICLE 29. INSURANCE

- 29.1 For the term of this Agreement and for three years following its completion or termination, Subcontractor shall secure and maintain in effect, at its own expense, the insurance coverage and minimum limits of liability set forth in Exhibit C to the Agreement that will fully protect Subcontractor, Contractor and Owner. If higher limits are required by the Prime Contract, Subcontractor will comply with such requirements by providing evidence of such increased limits or with any umbrella or excess liability policy. Such insurance policies shall: (i) name Contractor and Owner, and their respective affiliates, directors, officers, employees and agents (“**Contractor Parties**”) as additional insureds, (ii) be endorsed to provide a waiver of subrogation in favor of Contractor Parties, and (iii) be primary over any other insurance available to the Contractor Parties or any self-insurance program of any Contractor Parties. Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by any insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance. If available from the insurance carrier, all policies shall be endorsed to notify Contractor with 30 days’ prior written notice of cancellation and termination of Subcontractor’s coverage thereunder. If not available, Subcontractor shall provide Contractor with 30 days’ prior written notice of cancellation and termination of Subcontractor’s coverage thereunder.
- 29.2 Prior to beginning the Work, Subcontractor will provide to Contractor certificate(s) of insurance, including all applicable endorsements, evidencing that Subcontractor maintains insurance in accordance with the foregoing requirements. Contractor shall have no obligation Subcontractor on to examine such certificate(s) or to advise Subcontractor in the event the insurance is not in compliance with Contractor requirements. Contractor’s receipt and/or acceptance of certificate(s) not in compliance with Subcontractor’s requirements shall not be construed as a waiver of such insurance requirements, which constitute a material condition to this Agreement. Further, the insurance coverage and amounts to be maintained are not intended to and shall not in any manner limit or qualify the liabilities and obligations of Subcontractor.

ARTICLE 30. MISCELLANEOUS

- 30.1 The terms and conditions hereof shall inure to and be binding upon the parties hereto, their successors, assigns, executors, administrators and legal representatives.
- 30.2 This Agreement, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, shall be governed by, and construed in accordance with, the laws of the state set forth in the governing law provision in the Prime Contract, and if there is no governing law provision in the Prime Contract, then the laws of the state in which the Project is located.

37763661v.4

37904231v.1