

**Oklahoma Union School District
Oklahoma 2018 Bond Issue - REVISED
Concession / Restroom Building
Revisions**

**Construction Manager's
Bid Package Book**

June 4, 2019 @ 4:00 PM CDT



**Decker Construction, Inc.
1215 E 8th St. PO Box 254
Coffeyville, KS 67337**

Construction Manager's Bid Package Book

Table of Contents

DIVISION 0

BIDDING AND CONTRACTING REQUIREMENTS

001000 Notice to Bidders
 001150 Instructions for Bidders

ITEMS REQUIRED IN BID PACKET

001300 Form of Proposal
 001400 Affidavit of Non-Collusion
 001500 Business Relationships Affidavit
 001600 Affidavit of Bidder
 001700 Bid Package General Requirements
 001800 Bid Packages

06A – Rough Carpentry, Complete	09F – Insulation, Sheetrock and Fiberglass Reinforced Panels, Complete
07A – Exterior Metal Wall and Roof Panels, Complete	10D – Exterior and Interior Signage, Complete

CONTRACT ITEMS

018001 Federal Subcontractor or Material Supplier Certification of Compliance with Asbestos Restrictions
 002000 Decker Construction Sample Subcontract
 002100 Decker Construction Sample Subcontract DCI.1
 003000 Decker Construction Sample Purchase Order
 005000 Sample Subcontractor Application for Payment

Bid Solicitation:

Owner: Oklahoma Union Public Schools, Route 1 Box 377-7, South Coffeyville, OK 74072

Architect: Ambler Architects, 510 SE Dewey Ave., Bartlesville, OK 74005

Construction Manager: Decker Construction, Inc., 1215 E 8th St., Coffeyville, KS 67337

Decker Construction, Inc. will accept sealed bids for Oklahoma Union Public Schools 2018 Bond Issue – Concession/Restroom Building Revisions until June 4, 2019 at 4:00 PM CDT.

Scope of Project:

Construction of a new wood framed concession, restroom and locker facility – Select Bid Packages

Bid Packages:

06A – Rough Carpentry, Complete

07A – Exterior Metal Wall and Roof Panels, Complete

09F – Insulation, Sheetrock and Fiberglass Reinforced Panels, Complete

10D – Exterior and Interior Signage, Complete

Process for Submitting Bids:

Refer to the Instructions to Bidders section in the Construction Managers Bid Package Book for documents and directions on submitting bids.

Bids must be for a lump-sum amount and must be inclusive if all bid package items listed.

Sealed bids will be opened publicly and read aloud at the High School Library of Oklahoma Union Public Schools, Route 1, Box 377-7, South Coffeyville, OK 74072 on June 4, 2019 4:00 PM CDT.

Examination of Bidding Documents:

Bid documents will be available for viewing at the following locations:

1. iSqFt Internet Plan Room
2. The Construction Manager's Website: <http://www.decker-construction.com/online-plan-room.html>
3. The Construction Manager's Office: 1215 E 8th St., Coffeyville, KS 67337

Contact Information:

Questions regarding the bidding documents may addressed to the following:

1. Architect – Ambler Architects – 918-336-3512
2. Construction Manager – Decker Construction, Inc. – 620-251-7693

Section 001150

INSTRUCTIONS TO BIDDERS

To be considered, bids must be made in accordance with these Instructions to Bidders.

1.1 CONDITIONS RELATING TO CONSTRUCTION:

Bidders shall carefully examine **all** bid documents and the construction site to obtain first- hand knowledge of existing conditions. Bidder must confirm all utility locations, sizes, pressures, etc., and satisfy himself as to existing conditions under which he will be obliged to operate. Contractor must employ such methods and means in carrying out the work as will not cause interruption or interference with any other Contractor of the Owner. Bidders shall not be given extra payments for conditions that can be determined by examining the site and bid documents.

1.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS:

Should a Bidder find discrepancies in, or omissions from, the bid documents, or be in doubt as to their meaning, he must notify the Construction Manager **in writing five (5) working days** prior to the bid opening. Replies shall be issued to all bidders of record by Addendum to the bid documents and shall become part of the contract. The Owner shall not be responsible for oral clarification. All addenda items issued during the time of bidding shall be covered in the bid and acknowledged on the proposal.

The Contract and Bidding Documents may be obtained at the office of the Construction Manager at 1215 East 8th Street, Coffeyville, KS. Copies of the contract and bidding documents may also be reviewed at the Oklahoma Bid News Construction Reports.

1.3 SUBSTITUTIONS:

- A. The materials, products, and equipment described in the Documents establish a standard of required function, dimension, appearance, and quality to be met by any proposed substitution. To obtain approval to use unspecified products, the Bidder shall submit a written request at least **seven (7) days** before the bid date. Requests shall clearly describe the product for which approval is asked including all data necessary to demonstrate acceptability.
- B. Basic data and characteristics of the specified items, as well as the proposed item, shall be submitted. It is the sole responsibility of the Bidder to submit complete descriptive and technical information so the Owner may make a proper appraisal. The burden of proof of the merit of the proposed substitute is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final. If the product is acceptable, the Architect shall approve it in an addendum issued to all prime bidders of record. Bidders shall not rely upon approvals made in any other manner.

1.4 BASIS OF BID:

Proposals will be made of a single contract, lump-sum amount for all work shown or described in **all** of the contract documents.

1.5 BID SECURITY:

Bid security shall be made payable to OWNER in the amount of five percent (5%) of the bid sum. Security shall be either certified check or a bid bond issued by a surety licensed to conduct business in the State of Oklahoma. The successful Bidder's security shall be retained until he has signed the contract, Insurance Certificates, and all other documents required to be furnished with the Executed Contract Agreement. The Owner reserves the right to retain the security of all Bidders until the successful Bidder enters into a contract or until 45 days after the bid opening, whichever is the shorter. All other bid security shall be returned as soon as practical. If any Bidder refuses to enter into a contract, the Owner shall retain his bid security as liquidated damages, but not as a penalty. The bid security is to be enclosed in the same envelope with the bid proposals. **Any Bidder (materials only or materials and installation) whose total bid amount is less than \$50,000.00 is not required to furnish a bid bond with their bid.**

1.6 PERFORMANCE BOND, LABOR AND MATERIAL PAYMENT BOND AND DEFECT BOND:
Bidders shall not include the cost of bonds in the base bid unless specifically noted in bid package. Furnish bonds with a surety company acceptable to the Owner and Construction Manager. Bidder's bond surety shall be listed in the current revision of U. S. Department of Treasury Circular, "Surety Companies Acceptable on Federal Bonds." The Bidder shall deliver said bonds to the Construction Manager no later than the date of execution of the contract. Failure or neglecting to deliver said bonds, as specified, shall be retained as liquidated damages. Bonds shall be written for the sum equal to the contract price, including accepted alternate bids.

1.7 CONTRACTORS:
There shall be only one contractor named for each classification listed.

1.8 MODIFICATION AND WITHDRAWAL:
Bids may not be modified after submittal. Bidders may withdraw bids at any time before bid opening. No bid may be withdrawn or modified after the bid opening except where the award of the contract has been delayed for **45 days**.

1.9 FORM OF PROPOSAL:
A. Before submitting the proposal, carefully examine **all** bid documents, visit the site, examine existing conditions and limitations, and include a sum to cover the costs of all items included in the bid documents. Failure or omission of the Bidder to receive or examine any form, instrument, addendum or other document, or to visit the site and acquaint himself with existing conditions shall not relieve the Bidder from obligations with respect to his bid or to contract requirements.
B. Proposals shall be made only on the bid package forms provided in this Construction Managers Bid Package Book. Blank spaces on the form shall be fully filled out, numbers stated both in writing and figures, signatures signed, and form completed without interlineation, alteration or erasure. Oral, telegraphic or telephonic proposals or modifications shall not be accepted.

1.10 PROPOSAL PROCEDURE:
A. Bidders shall submit the following documents in a large, manila envelope with a label including all of the information listed below:

1. Bid Date and Location:

Bid Date: 4:00PM CDT, June 4, 2019

**Bid Place: Oklahoma Union Schools
High School Library (High School Building)
Route 1, Box 377-7
South Coffeyville, Oklahoma 74072**

2. Label Information: **Oklahoma Union Schools
Oklahoma 2018 Bond Issue**

Submitted By: _____

Bid Package(s) # _____

3. Proposal Form, complete with every blank filled in
4. Bid Package, complete with every blank filled in
5. Non-Collusion Affidavit, notarized
6. Business Relationship Affidavit, notarized

7. Affidavit of Bidder, notarized
8. Bid security (If over \$50,000)

- B. The Bidder, by his failure to include every listed Items 2 through 8 above within the sealed envelope and label information as required in item 1, may forfeit his right to have his bid considered.
- C. Each Bidder shall propose an additive or deductive sum to the base bid sum for each alternate included in each Bid Package, except that should he desire not to bid an alternate he may insert the words "No Bid" in the space provided for price for such alternate.
- D. Proposals shall not contain any recapitulation of the work to be done.
- E. Proposals shall be delivered to place designated in the Invitation to Bidders on or before the day and hour set for the opening of bids. The proposal shall be in an opaque, sealed envelope, bearing the Bid Package number(s) and the name of the Bidder. It is the sole responsibility of the Bidder to deliver the proposal before the scheduled closing time. Bids received after the scheduled closing time shall be returned unopened.
- F. In the event of discrepancy between prices quoted in words and those quoted in figures, words shall govern. Prices shall include the furnishing of materials, equipment, tools and all other facilities and performance of labor and services necessary for proper completion of the work.
- G. Addenda: Any addenda issued during the time of bidding are to be acknowledged in the proposal; in executing a contract, they will become a part thereof.

1.11 EXECUTION OF CONTRACT:

- A. The Owner anticipates award of the contract for construction on the basis of the lowest, responsible bid, including any alternates accepted, which the Owner deems to be in its best interest.
- B. Each Bidder shall be prepared, upon execution of the contract agreement, to commence work following receipt of his written order of the Owner to proceed.
- C. Tax Exempt Status: **The Owner is tax exempt for all city, county and state sales tax for this project.**

1.12 CONTRACT:

The form of agreement, which the successful Bidder, as Contractor, shall be required to execute is the Decker Construction, Inc. Standard Subcontract Agreement & DCI.1 Form which is attached.

1.13 WORK UNDER THIS CONTRACT:

Includes all required permits, fees, material, labor, tools, expendable equipment, transportation services, daily cleanup, and all incidental items necessary to perform and complete all of the work required as indicated on the drawings and/or specified herein.

1.14 NON-USE OF TOBACCO PRODUCTS POLICY

By submission of Bidding Documents, bidder understands that the construction site is covered by the Owner's Policies. Any individual on-site, including but not limited to, contractors, subcontractors, and suppliers are prohibited from using tobacco products while on school property (which includes construction sites). Any individual violating the policy may be required to be removed from the owner's property on a permanent basis.

END OF DOCUMENT

Section 001300

FORM OF PROPOSAL

Date:

Proposal of, _____ (hereinafter referred to as the "Bidder"), a _____ organized and Existing under the laws of the State of _____, doing business as _____.

TO: Decker Construction, Inc.
1215 E 8th St.
Coffeyville, Kansas 67337

Bidders:

The undersigned, as "Bidder", in compliance with the Contract Documents, declares that he has examined the site of the Work and informed himself in regards to all conditions pertaining to the place where Work is to be performed; that he has examined all the Drawings and Project Manuals for the Oklahoma Union Public Schools 2018 Bond Issue Project as prepared by Ambler Architects, located at 510 S.E. Dewey Ave., Price Tower Suite 500, Bartlesville, OK 74003 and Contractual Documents relative thereto; and that he has satisfied himself relative to the Work to be performed.

Bidder hereby proposes and agrees to furnish all necessary labor, materials, tools, equipment and supplies, together with all other items of cost including housekeeping, haul-off of Bidders debris to on-site dumpster provided by others, layout, insurance and supervision, required for the work called for on the Drawings, Project Manuals, and bid package at the prices stated in written words and numerical format (in case of discrepancy, the amount indicated in words shall govern) on the individual bid package form(s) listed below.

Bidder acknowledges each package listed below is required to be bid individually and separately from all other bid packages listed on the bid form.

The following information is provided in order to define and describe the Scope of Work, which will be required of the successful Bidder. It is intended for the following information to be complementary with the requirements of all the other Bidding Documents. This Document will become a part of the successful Bidder's final Contract.

Bidder is submitting bids on the following package(s) - List Bid Package Number(s) and attach each to this bid proposal form:

OTHER CONDITIONS: Bidder agrees that his bid shall be good and may not be withdrawn for a period of **sixty (45) calendar days** after the actual date of the bid opening.

Bidder agrees, if awarded the Contract, to execute an Agreement to perform the proposed Work for the bid package(s) stated compensation within ten (10) days after the award and to deliver to the Construction Manager, within said ten (10) days, the required bonds and insurance policies in

forms to be approved by the Construction Manager, along with all other specified contract related documents.

INSURANCE: During all phases of the Project, the Subcontractor shall purchase and maintain insurance as set forth in **Exhibit 9.2.2.1 of the Standard Form of Agreement – Subcontractor Insurance Requirements**, which is attached to and a part of each subcontract.

All insurance certificates must have an additional clause which states:

“Certificate Holder, Architect and Owner are additional insured. Waiver of subrogation applies to all insurance policies in favor of certificate holder. Decker Construction, Inc. is the “certificate holder”.

Bidder understands that the Owner reserves the right to reject any or all Bids and to waive any informalities or irregularities therein.

We the Bidder have attached to this bid the following item:

- 1. Bid Package(s) to be included within this proposal.**

ADDENDA: Receipt of the following addenda are hereby acknowledged:

Addendum # _____	Date _____
Addendum # _____	Date _____
Addendum # _____	Date _____
Addendum # _____	Date _____
Addendum # _____	Date _____

Respectfully Submitted by “Bidder”,

(Company Name)

Doing business as a _____

In the State of _____

By: _____
(Authorized Signature)

(Print Name)

Its: _____
(Title)

(Business Address)

(Telephone Number)

(Fax Number)

ATTEST:

By: _____

Its: _____

[CORPORATE SEAL]

NOTE: If Bidder is a corporation, complete the information as requested above (i.e., state of incorporation) and attest document in the space provided. If Bidder is a partnership, give full name of all partners.

ATTACHMENTS: Individual Bid Package(s) Form.

END OF DOCUMENT

Section 001400 Affidavit of Non-Collusion:

(To Accompany Bid Proposal)

STATE OF : _____)
) SS.
COUNTY OF : _____)

_____, of lawful age, being first duly sworn on oath says that (s)he is the agency authorized by the bidder to submit the attached bid. Affiant further states that the bidder has not been a party to any collusion among bidders in restraint of freedom of competition by quantity, quality, or price in the prospective contract or any other terms of said prospective contract; or in any discussions between bidders and any state official concerning exchange of money or other things of value for the special consideration in the letting of a contract.

Agent Authorized by Bidder

Complete Legal Name of Bidder

Subscribed and sworn to before me this _____ day of _____, 201__.

Notary Public (SEAL)

My commission Expires: _____
Date

End of Section

Section 001500 Business Relationships Affidavit

(To Accompany Bid Proposal)

STATE OF : _____)
) SS.
COUNTY OF : _____)

_____, of lawful age, being first duly sworn on oath says that (s)he is the agency authorized by the bidder to submit the attached bid. Affiant further states that the nature of any partnership, joint venture, or other business relationship presently in effect or which existed within one (1) year prior to the date of this statement with the Architect, Engineer, or other party to the project is as follows:

Affiant further states that any such business relationship presently in effect or which existed within one (1) year prior to the date of this statement between any officer or director of the bidding company and any officer or director of the architectural or engineering firm or other party to the project is as follows:

(If none of the business relationships herein mentioned exist, affiant should so state.)

Agent Authorized by Bidder

Complete Legal Name of Bidder

Subscribed and sworn to before me this _____ day of _____, 201__.

Notary Public (SEAL)

My commission Expires: _____
Date

End of Section

Section 001600 Affidavit of Bidder

(To Accompany Bid Proposal)

STATE OF : _____)
) SS.
COUNTY OF : _____)

_____, of lawful age, being first duly sworn on oath says that (s)he is the agent authorized by the bidder to submit the attached bid.

Agent Authorized by Bidder

Complete Legal Name of Bidder

Subscribed and sworn to before me this _____ day of _____, 201__.

Notary Public (SEAL)

My commission Expires: _____
Date

End of Section

Section 001700

BID PACKAGE GENERAL REQUIREMENTS

The scope of work for ALL bid packages shall include, but is not necessarily limited to, the following general items: Project

Coordination:

- 1.) Contractor is to furnish all manpower, materials, and equipment necessary, as required by the project schedule, and to furnish additional crews, equipment, etc. and/or overtime required to maintain the schedule if Contractor falls behind due to their own fault or due to inclement weather.
- 2.) Contractor is responsible for field layout from benchmarks and base building control line furnished by the Construction Manager.
- 3.) Contractor shall furnish hoisting, material transport, and all material handling for the scope of this bid package.
- 4.) Contractor shall furnish pumping and dewatering as required for the scope of this bid package.
- 5.) Contractor will perform any saw cutting, patching, and removal of debris as required for the scope of this bid package.
- 6.) Contractor shall furnish its own drinking water for its employees and its subcontractors for the scope of this bid package.
- 7.) Contractor shall include all remobilization operations required to complete the scope of this bid package.
- 8.) Contractor shall coordinate all material deliveries with the Construction Manager and shall have a representative on site to receive all deliveries of materials under the scope of work of this bid package.
- 9.) Contractor shall clean up his work in such a manner as to maintain safe working conditions on the project, including but not limited to excess material, lunch trash, and dirt and debris on streets and sidewalks. All trash generated from this Contractor's work or its' forces shall be removed by the Contractor's own forces and Contractor's equipment. Trash shall be placed in an on-site dumpster provided by construction manager.
- 10.) Contractor's field supervisory personnel shall attend weekly project coordination meetings while performing work on the site.
- 11.) Contractor shall periodically inspect the progress of project and attend weekly project coordination meetings prior to performing work on the site for purposes of coordinating future work of this contractor with other trades and construction manager.
- 12.) Contractor will be required to attend a "Preconstruction Meeting" as set up by the Construction Manager. Preconstruction Meetings will be held prior to contractors being allowed to work onsite.
- 13.) Contractor shall conform to the Construction Manager's work hours.
- 14.) Contractor shall furnish protection of adjacent surfaces and repair of any damage caused by the work of this Contractor.
- 15.) Contractor's personnel are to remain in the work area and are not to use any of the owner's existing facilities. Personnel in areas other the work area will be removed from the project.
- 16.) Contractor shall examine substrates upon which work is to be installed. Notification must be given to the Project Manager / Construction Manager in writing of conditions detrimental to timely and proper installation of work. Do not start the work until unsatisfactory conditions have been corrected. If work is started without notification of unsatisfactory conditions, it shall be construed as an acceptance of substrate by this Contractor, who shall repair unsatisfactory work caused by unsatisfactory substrate at no expense to the Owner.
- 17.) Contractor shall have supervision on-site for work performed in their contract including supplier deliveries and work that is being subcontracted within the scope of work by this Contractor.
- 18.) Contractor to provide a detailed layout of any blocking required for materials provided within the scope of this bid package for blocking that is not specifically listed to be installed by this bid package.
- 19.) This bid package includes a required 40 hour work week, and any normal delays (such as weather, coordination conflicts, & work congestion) will be made up on Saturday and Sunday. Contractor shall provide any premium or shift differential with the bid.
- 20.) Contractor is responsible to review the Contract Documents and immediately advise the Construction Manager of any adverse factors, conflicts, or ambiguities, which might affect the execution of the contract work. Contractor is responsible to review all scope category descriptions and Contract Documents and coordinate his work accordingly. Contractor agrees to incorporate into his contract and coordinate his work with the requirements of all subsequent documents.
- 21.) If successful, the bidder will provide Decker Construction, Inc. with a schedule of values and assist the Construction Manager in creating a detailed progress schedule.
- 22.) Contractor shall be responsible for the review of all drawings for coordination as it relates to the installation of this subcontractor's work.

Testing:

- 23.) Contractor will assist the Material Testing Laboratory in obtaining samples and gathering data as needed and shall notify the Construction Manager a minimum of 24 hours in advance of testing required under the scope of work of this bid package.
- 24.) Laboratory materials testing shall be provided by others, however, any re-testing required due to failed initial testing or areas not being ready for required testing due to the actions of this Contractor shall be paid for by this Contractor.

Administrative:

- 25.) Payment shall only be due for the portion of the Work actually completed. Within ten (10) days after receipt by Decker Construction, Inc. of payment from the Owner, Decker Construction, Inc. will make payment in the amount and to the extent received from the Owner, less any applicable retainage. Progress payment applications must be submitted by the Subcontractor by the 20th of each month. Retainage withheld for all subcontracts will be five percent (5%) of the total completed and stored to date. A Subcontractor's Affidavit and Waiver of Lien for prior payments must be properly executed and returned prior to issuance of subsequent payments.
- 26.) Contractor will furnish all submittals, shop drawings, samples, mock-ups, and closeout documents required by the contract documents.
- 27.) Contractor shall furnish all submittals, shop drawings, and samples within 10 days of receipt of notice to proceed.
- 28.) Contractor will furnish all licenses, permits, and certifications and arrange for inspections and testing as may be required by and for this Contractor's work, and as required by the authorities having jurisdiction.
- 29.) Contractor will be expected to sign the form of agreement, and provide insurance and bonds as required in the Contract Documents and Subcontract Sample.
- 30.) Contractor shall submit closeout documents within 30 days of completion of the scope of this bid package.
- 31.) **Material purchased for work is Tax Exempt.**

Company: _____
Contact Name: _____
Phone: _____
Email: _____
Fax: _____

Federal Subcontractors or Material Suppliers Certification of Compliance With Asbestos Restrictions

DATE:

TO: _____ (Name of General Contractor)

RE:

Sirs,

As a Subcontractor or Material Supplier for the above referenced project, we do certify and attest that no building materials or products were knowingly incorporated or installed in this project that contained more than one percent (1%) asbestos by weight, within the meaning of Public Law 99-519 together with the United States Environmental Protection Agency Regulations, Section 763.83 promulgated October 30, 1987, Federal Register, Volume 52, No. 210 defining Asbestos Containing Building Material (ACBM).

We also certify and attest that this Certification of Compliance with Asbestos Restrictions was included in each and every Sub-subcontractor and purchase order connected with the performance of Work for this Project, with a copy signed by the Sub-subcontractor or Material Supplier remaining in our Project File for inspection.

Respectfully,

_____ (Name of Subcontractor)

_____ (Address of Subcontractor)

By: _____
Title

Date: _____

Attest and Seal: _____

Subscribed and sworn to before me this _____ day of _____, 201__.

_____ My commission expires _____
Notary Public (SEAL) Date

**Oklahoma Union School District
Oklahoma 2018 Bond Issue**

Section 002000

**Decker Construction, Inc. – Sample Subcontractor
Subcontract**

DECKER CONSTRUCTION COMPANY, INC.
Exhibit A

**STANDARD FORM OF AGREEMENT BETWEEN
CONTRACTOR AND SUBCONTRACTOR**

(Where the Contractor and Subcontractor Share the Risk of Owner Payment)

TABLE OF ARTICLES

1. AGREEMENT
2. SCOPE OF WORK
3. SUBCONTRACTOR'S RESPONSIBILITIES
4. CONTRACTOR'S RESPONSIBILITIES
5. PROGRESS SCHEDULE
6. SUBCONTRACT AMOUNT
7. CHANGES IN THE SUBCONTRACT WORK
8. PAYMENT
9. INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION
10. CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT
11. DISPUTE RESOLUTION
12. MISCELLANEOUS PROVISIONS
13. EXISTING SUBCONTRACT DOCUMENTS

This Agreement had important legal and insurance consequences. Consultation with an attorney and an insurance consultant is encouraged with respect to its completion or modification.

ARTICLE 1 AGREEMENT

This Agreement is made by and between the

CONTRACTOR:
Decker Construction, Inc.
1215 East 8th Street
Coffeyville, KS 67337

and the

SUBCONTRACTOR: As stated on cover sheet SUBCONTRACT – Form DCI.1

for services in connection with the

SUBCONTRACTOR WORK: As stated on cover sheet SUBCONTRACT – Form DCI.1

for the following:

PROJECT: As stated on cover sheet SUBCONTRACT – Form DCI.1

whose

OWNER is: As stated on cover sheet SUBCONTRACT – Form DCI.1

The ARCHITECT/ENGINEER for the Project is: **As stated on cover sheet SUBCONTRACT – Form DCI.1**

ARTICLE 2 SCOPE OF WORK

2.1 SUBCONTRACT WORK: The Contractor contracts with the Subcontractor as an independent contractor to provide all labor, materials, equipment and services necessary or incidental to complete the Subcontract Work described in Article 1 for the Project in accordance with , and reasonably inferable from, that which is indicated in the Subcontract Documents, and consistent with the Progress Schedule, as may change from time to time. The Subcontractor shall perform the Subcontract Work under the general direction of the Contractor and in accordance with the Subcontract Documents.

2.2 CONTRACTOR'S WORK: The Contractor's Work is the construction and services required of the Contractor to fulfill its obligations pursuant to the Owner-Contractor Agreement with the Owner.

2.3 SUBCONTRACT DOCUMENTS: The Subcontract Documents included the Agreement, the addenda, Subcontract Change Orders, Invitation to Bid (if applicable), amendments and any pending and exercised alternates. 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 Subcontractor similarly shall make copies of applicable portions of the Subcontract Documents available to its proposed subcontractors and suppliers. Nothing shall prohibit the Subcontractor from obtaining copies of the Subcontract Documents from the Contractor at any time after the Subcontract Agreement is executed. The Subcontract Documents existing at the time of the execution of this Agreement are set forth in Article 13.

2.4 CONFLICTS: In the event a conflict between this Agreement and the other Subcontract Documents, this Agreement shall govern.

2.5 EXTENT OF AGREEMENT: Nothing in this Agreement shall be construed to create a contractual relationship between persons or entities other than the Contractor and 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.

2.6 DEFINITIONS

2.6.1. Wherever the term Progress Schedule is used in this Agreement, it shall be read as Project Schedule when that term is used in the Subcontract Documents.

2.6.2 Whenever the term Change Order is used in the Agreement, it shall be read as Change Document when that term is used in the Subcontract Documents.

2.6.3 Unless otherwise indicated, the term Day shall mean calendar day.

2.6.4 Designer shall mean a licensed design professional.

ARTICLE 3 SUBCONTRACTOR'S RESPONSIBILITIES

3.1 OBLIGATIONS: The Contractor and Subcontractor are hereby mutually bound by the terms of this Subcontract. To the extent the terms of the Owner-Contractor Agreement apply to the Work of the Subcontractor, then the Contractor hereby assumes toward the Subcontractor all the obligations, rights, duties, and redress that the Owner under the Owner-Contractor Agreement assumes toward the Contractor. In an identical way, the Subcontractor hereby assumes toward the Contractor all the same obligations, rights, duties, and redress that the Contractor assumes toward the Owner and the Architect/Engineer under the Owner-Contractor Agreement.

3.2 RESPONSIBILITIES: The Subcontractor agrees to furnish its best skill and judgment in the performance of the Subcontract Work, and to cooperate with the Contractor so that 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 provide the Contractor a list of its proposed subcontractors and suppliers within ten (10) days of executing this Agreement, and be responsible for taking field dimensions, providing tests, obtaining required permits related to the Subcontract Work and affidavits, ordering of materials, and all other actions as required to meet the Progress Schedule. The Subcontractor is required to notify the Contractor, in writing, of any additions or changes to its list of subcontractors and suppliers within five (5) days of such addition or change. Subcontractor shall have a continuing obligation for the duration of this Agreement to provide a current list to Contractor, in writing, of all of its subcontractors and suppliers.

3.3 INCONSISTENCIES AND OMISSION: The Subcontractor shall make a careful analysis and comparison of the drawings, specifications, other Subcontract Documents, bid packages, and information furnished by the Owner relative to the Subcontract Work. Such analysis and comparison shall be solely for the purpose of facilitating the Subcontract Work and not for the discovery of errors, inconsistencies or omissions in the Subcontract Documents, nor for ascertaining if the Subcontract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules or regulations. Should the Subcontractor discover any errors, inconsistencies or omissions in the Subcontract Documents, the Subcontractor shall report such discoveries to the Contractor in writing within three (3) days. Upon receipt of notice, the Contractor shall instruct the Subcontractor as to the measures to be taken, and the Subcontractor shall comply with the Contractor's instructions. If the Subcontractor performs Work knowing it to be contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to the contractor and advance approval by appropriate authorities, including the Contractor, the Subcontractor shall assume appropriate responsibility for such Work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation. Nothing in this Paragraph 3.3 shall relieve the Subcontractor of responsibility for its own errors, inconsistencies and omissions.

3.4 SITE VISITATION: Prior to performing any portion of the Subcontract Work, the Subcontractor shall conduct a visual inspection of the Project site to become generally familiar with local conditions and to correlate site observations with the Subcontract Documents. If the Subcontractor discovers any discrepancies between its site observations and the Subcontract Documents, such discrepancies shall be promptly reported to Contractor.

3.5 INCREASED COSTS AND/OR TIME: The Subcontractor may assert a Claim as provided in Article 7 if the Contractor's clarifications or instructions in response to requests for information are believed to require additional time or cost. If the Subcontractor fails to perform the reviews and comparisons required in Paragraphs 3.3 and 3.4 above, 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.

3.6 COMMUNICATIONS: Unless otherwise provided in the Subcontract Documents, and except for emergencies, the Subcontractor shall direct all communications related to the Project to the Contractor.

3.7 SUBMITTALS

3.7.1 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 and/or bid packages. The Subcontractor shall be responsible to the Contractor for the accuracy and conformity of its submittals to the Subcontract Documents. The Subcontractor shall prepare and deliver its submittals to the Contractor in such time and sequence so as not to delay the Contractor or others in the performance of the Work. 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 for the Contractor and Owner authorizing such deviation, substitution or change. In the event that 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, Owner or the Architect/Engineer.

3.7.2 The Contractor, Owner and Architect/Engineer are entitled to rely on the adequacy, accuracy and completeness of any professional certifications required by the Subcontract Documents concerning the performance criteria of systems, equipment or materials, including all relevant calculations and any governing performance requirements.

3.8 DESIGN DELEGATION

3.8.1 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 those design services necessary to satisfactorily complete the Subcontract Work. Design services provided by the Subcontractor shall be procured from licensed design professionals 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 the completeness of the services, certifications or approvals performed by the Designer.

3.8.2 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, except to the extent that consequential damages are waived pursuant to Paragraph 5.4, or exclusion from participation in the multi-party proceedings requirement of Paragraph 11.4. The Designer(s) is (are): NA_. The Subcontractor shall notify the Contractor in writing if it intends to change 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.

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

3.9 TEMPORARY SERVICES: The Subcontractor's responsibilities for temporary services are set forth in Exhibit Noted on Cover Sheet_.

3.10 COORDINATION: The Subcontractor shall:

3.10.1 cooperate with the Contractor and all others who's Work may interface with the Subcontract Work;

3.10.2 specifically note and immediately advise the Contractor of any such interface with the Subcontract Work; and

3.10.3 participate in the preparation of coordination drawings and work schedules in areas of congestion.

3.11 SUBCONTRACTOR'S REPRESENTATIVE: The Subcontractor shall designate a person, subject to the Contractor's approval, who shall be the Subcontractor's authorized representative. The representative shall be the only person to whom the Contractor shall issue instructions, orders or directions, except in an emergency.

3.12 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 Contractor and Owner. Required certificates of testing, approval or inspection shall, unless otherwise required by the Subcontract Documents, be secured by the Subcontractor and promptly delivered to the Contractor.

3.13 CLEAN UP:

3.13.1 Subcontractor shall at all times during its performance of the Subcontract Work keep the work site clean and free from debris resulting from the Subcontract Work. Prior to discontinuing the Subcontract Work in an area, the Subcontractor shall clean the area and remove all its rubbish and its construction equipment, tools, machinery, waste and surplus materials. The Subcontractor shall make provisions to minimize and confine dust and debris resulting from its construction activities. The Subcontractor shall not be held responsible for unclean conditions caused by others.

3.13.2 If the Subcontractor fails to commence compliance with cleanup duties within forty-eight (48) hours after verbal or written notification from the Contractor of non-compliance, the Contractor may implement appropriate cleanup measures without further notice, and the cost thereof shall be deducted from any amounts due or to become due the Subcontractor.

3.14 SAFETY:

3.14.1 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:

3.14.1.1 employees and other persons at the site;

3.14.1.2 materials and equipment stored at the site or at offsite locations for use in performance of the Work: and

3.14.1.3 all property and structures located at the site and adjacent to work areas, whether or not said property or structures are part of the Project, or involved in the Work.

3.14.2 The Subcontractor shall give all required notices and comply with all applicable rules, regulations, orders and other lawful requirements established to prevent injury, loss or damage to persons or property.

3.14.3 The Subcontractor shall implement appropriate safety measures pertaining to the Subcontract Work and the Project, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the site and adjacent to the site from injury, loss or damage.

3.14.4 The Subcontractor shall exercise extreme care in carrying out any of the Subcontract Work which involved 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 reduce the risk of bodily injury or property damage.

3.14.5 Damage or loss not insured under property insurance, which may arise from the performance of the Subcontract Work, to the extent of the negligence attributed to such acts or omissions of the Subcontractor, or anyone for whose acts the Subcontractor may be liable, shall be promptly remedied by the Subcontractor. Damage or loss attributable to the acts or omissions of the Contractor, and not to the Subcontractor, shall be promptly remedied by the Contractor.

3.14.6 The Subcontractor is required to designate an individual at the site, in the employ of the Subcontractor, who shall act as the Subcontractor's OSHA competent safety representative with a duty to prevent accidents. Unless otherwise identified by the Subcontractor in writing to the Contractor, the designated safety representative shall be the Subcontractor's project superintendent.

3.14.7 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 an unreasonable risk of bodily 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.

3.14.8 The Subcontractor shall give prompt written notice to the Contractor of any accident involving bodily injury requiring a physician's care, any property damage exceeding five-hundred dollars (\$500.00) in value, or any failure that could have resulted in serious bodily injury, whether or not such an injury was sustained.

3.14.9 Prevention of accidents at the site is the responsibility of the Contractor, 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 establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction, and by the Contractor and Owner, including but not limited to, requirements imposed by the Subcontract Documents. The Subcontractor shall comply with the Decker Construction Company, Inc. Safety Program. 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 the Contractor deems unsafe, until corrective measure satisfactory to the Contractor shall have been taken. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility for such practices. The Subcontractor shall notify the contractor immediately following an accident and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by 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 committed by the other, but only to the extent that such fines or penalties are caused by its failure to comply with applicable safety requirements.

3.15 PROTECTION OF THE 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 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. If the Subcontractor fails to remedy the damage with forty-eight (48) hours after verbal or written notification from the Contractor, the Contractor may remedy the damage without further notice and the cost thereof shall be deducted from the amounts due or to become due the Subcontractor, unless such costs are recovered under applicable property insurance.

3.16 PERMITS, FEE, LICENSE 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 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.

3.17 ASSIGNMENT OF SUBCONTRACT WORK: The Subcontractor shall not assign the whole, or any part of the Subcontract Work, without prior written approval of the Contractor.

3.18 HAZARDOUS MATERIALS: To the extent that the Contractor has rights or obligations under the Owner-Contractor Agreement, or by law regarding hazardous materials as defined by the Subcontract Document within the scope of the Subcontract Work, the Subcontractor shall have the same rights or obligations.

3.19 MATERIAL SAFETY DATA (MSD) SHEET: The Subcontractor shall submit to the Contractor all Material Safety Data Sheets required by law for materials or substances necessary for the performance of the Subcontract Work. MSD sheets obtained by the Contractor from other subcontractors or sources shall be made available to the Subcontractor by the Contractor.

3.20 LAYOUT RESPONSIBILITY AND LEVELS: The Contractor shall establish principal axis lines of the building and site, and benchmarks. The Subcontractor shall layout, and is 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 layout or perform Subcontract Work correctly. The Subcontractor shall exercise prudence so that the actual final conditions and details shall result in alignment of finish surfaces.

3.21 WARRANTIES: The Subcontractor warrants that 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, a designated portion, or as designated in the Owner-Contractor Agreement.

3.21.1 Operation and Maintenance Manuals shall be provided by the Subcontractor to the Contractor when the Subcontract Work is 80% complete.

3.22 UNCOVERING/CORRECTION OF SUBCONTRACT WORK

3.22.1 UNCOVERING OF SUBCONTRACT WORK

3.22.1.1 If required in writing by the Contractor, the Subcontractor must uncover any portion of the Subcontract Work, which has been covered by the Subcontractor in violation of the Subcontract Documents, or contrary to a directive issued to the Subcontractor by the Contractor. Upon receipt of a written directive from the Contractor, the Subcontractor shall uncover such Work for the Contractor or Owner's inspection and restore the uncovered Subcontract Work to its original condition at the Subcontractor's time and expense.

3.22.1.2 The Contractor may direct the Subcontractor to uncover portions of the Subcontract Work for inspection by the Owner or Contractor at any time. The Subcontractor is required to uncover such Work whether or not the Contractor or Owner had requested to inspect the Subcontract Work prior to it being covered. Except as provided in Clause 3.22.1.1, 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 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, the Contractor shall be required to adjust this Agreement by change order for all such costs and time.

3.22.2 CORRECTION OF WORK

3.22.2.1 If the Architect/Engineer or Contractor rejects the Subcontract Work or 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 Contractor made necessary by the defective Subcontract Work.

3.22.2.2 In addition to the Subcontractor's obligations under Paragraph 3.21, the Subcontractor agrees to promptly correct, after receipt of a written notice from the Contractor, 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 of the Subcontract Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Subcontract Documents, so that the Owner can occupy or utilize the Project, or a designated portion, for the use of which it is intended. If the Subcontractor fails to correct defective or nonconforming Subcontract Work within a reasonable time after receipt of notice from the Contractor, the Contractor may correct such Subcontract Work pursuant to Subparagraph 10.1.1.

3.22.3 The Subcontractor's correction of Subcontract Work pursuant to this Paragraph 3.22 shall not exceed the one-year period for the correction of Subcontract Work, but if Subcontract Work is first performed after Substantial Completion, the one-year period for corrections shall be extended by the time period after Substantial Completion and the performance of that portion of Subcontract Work. The Subcontractor's obligation to correct Subcontract Work within one year as described in this Paragraph 3.22 does not limit the enforcement of the Subcontractor's other obligations with regard to the Agreement and the Subcontract Documents.

3.22.4 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.

3.22.5 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.

3.23 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 item it may discover that do not conform to requirements of the Subcontract Documents. The Subcontractor shall not proceed to install non-conforming 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.

3.24 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.

3.25 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, 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.

3.26 WORK FOR OTHERS: Until final completion of the Subcontract Work, the Subcontractor agrees not to perform any work directly for the Owner or any tenants, or deal directly with the Owner's representatives in connection with the Subcontract Work, unless otherwise approved in writing by the Contractor.

3.27 SUBCONTRACT BONDS

3.27.1 The Subcontractor shall furnish to the Contractor, the named Oblige, appropriate surety bonds to secure the faithful performance of the Subcontract work and to satisfy all Subcontractor payment obligations related to Subcontract Work.

3.27.2 If a performance or payment bond, or both, are required of the Subcontractor under this Agreement, the bonds shall be in a form and by a surety mutually agreeable to the Contractor and Subcontractor, and in the full amount of the Subcontract Amount, unless otherwise specified.

3.27.3 The Subcontractor shall be reimbursed, without retainage, for the cost of any required performance or payment bonds simultaneously with the first progress payment. The reimbursement amount for the subcontractor bonds shall not exceed 10% of the Subcontract Amount, which sum is included in the Subcontract Amount.

3.27.4 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 result of said termination, shall be paid by the Subcontractor.

3.27.5 All Subcontract bonds must be executed and returned prior to the Subcontractor's commencement of Work.

3.28 SYSTEMS AND EQUIPMENT STARTUP: 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 the initial startup and the testing of the Subcontract Work.

3.29 COMPLIANCE WITH LAWS: 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, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety and all other Laws with which the Contractor must comply. 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 employee 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 3.14.9.

3.30 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 the Agreement, the Subcontractor is equally bound by Owner's confidentiality requirements.

3.31 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 selected by the Subcontractor and incorporated in the Subcontract Work. The Subcontractor shall defend, indemnify and hold the Contractor and Owner harmless from all suits or claims for infringement of any patent right or copyrights arising out of such selection. The Subcontractor shall be liable for all loss, including all costs, expenses, and attorney's 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, the Subcontractor shall promptly furnish such information to the Contractor or be responsible to the Contractor and Owner for any loss sustained as a result.

3.32 LABOR RELATIONS: It is understood that the subcontracts will be awarded and labor will be employed without discrimination as to whether employees of any Contractor, Subcontractor, or those employed by the Owner of the Project are members or nonmembers of any labor organization and the Subcontractor accepts this Agreement with that understanding. The Subcontractor agrees to employ workers and mechanics on the Project who will work at all times in harmony with other workers and mechanics on the Project. The Subcontractor agrees to cooperate with the Contractor and to direct its employees to use such job entrances or gates as Contractor may designate for Subcontractor's use. Further, Subcontractor agrees to use its best effort to avoid disruption of work from any labor dispute (but shall not thereby be obligated to accede to union demands). Should there be a work stoppage caused by strike, picketing, boycott, or be any voluntary or involuntary cessation of work by employees of the Subcontractor, which in the judgment of the Contractor will cause, or is likely to cause unreasonable delay to the progress of the construction, the Contractor shall have the right to declare the Subcontractor in default of this understanding and agreement and may take such steps as necessary to finish the uncompleted portion of the Work. Contractor's remedy shall be in accordance with the provisions contained in this Agreement.

ARTICLE 4 CONTRACTOR'S RESPONSIBILITIES

4.1 CONTRACTOR'S REPRESENTATIVE: The Contractor shall designate a person who shall be the Contractor's authorized representative. The Contractor's representative shall be the only person the Subcontractor shall look to for instructions, orders and/or directions, except in an emergency. The Contractor's representative is the site supervisor.

4.2 PAYMENT BOND REVIEW: The Contractor has not yet provided the Owner a payment bond. The Contractor's payment bond for the Project, if any, shall be made available by the Contractor for review and copying by the Subcontractor.

4.3 OWNER'S ABILITY TO PAY

4.3.1 The Subcontractor shall have the right upon request to receive from the Contractor such information as the Contractor has obtained relative to the Owner's financial ability to pay for the Work, including any subsequent material variation in such information. The Contractor, however, does not warrant the accuracy or completeness of the information provided by the Owner.

4.3.2 If the Subcontractor does not receive the information referenced in Subparagraph 4.3.1. with regard to the Owner's ability to pay for the Work as required by the Contract Documents, the Subcontractor may request the information from the Owner and/or the Owner's lender.

4.4 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.

4.5 INFORMATION OR SERVICES: The Subcontractor is entitled to request through the Contractor any information or services relevant to the performance of the Subcontract Work, which is under the Owner's control. To the extent the Contractor receives such information and services, the Contractor shall provide them to the Subcontractor. The Contractor, however, does not warrant the accuracy or completeness of the information provided by the Owner.

4.6 STORAGE AREA: The Contractor shall allocate adequate storage areas, if available, for the Subcontractor's materials and equipment during the course of the Subcontract Work

- 4.7 TIMELY COMMUNICATIONS:** 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, communication by and with the Subcontractor's subcontractors, material men, and suppliers shall be through the Subcontractor.
- 4.8 USE OF SUBCONTRACTOR'S EQUIPMENT:** The Contractor, its agents, employees or suppliers shall use the Subcontractor's equipment only with the express written permission of the Subcontractor's designated representative and in accordance with the Subcontractor's terms and conditions for such use. If the Contractor or any of its agents, employees or suppliers utilize any of the Subcontractor's equipment, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Subcontractor, the Contractor shall defend, indemnify and be liable to the Subcontractor 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 Subcontractor's employees operating the Subcontractor's equipment.

ARTICLE 5 PROGRESS SCHEDULE

5.1 TIME IS OF THE ESSENCE: Time is of the essence for both parties. They mutually agree to see to the performance of their respective obligations so that the entire Project may be completed in accordance with the Subcontract Documents and particularly the Progress Schedule.

5.2 SCHEDULE OBLIGATIONS: The Subcontractor shall provide the Contractor with any scheduling information proposed by the Subcontractor for the Subcontract Work. In consultation with the Subcontractor, the Contractor shall prepare the schedule for performance of the Work (the Progress Schedule) and shall revise and update such schedule, as necessary, as the Work progresses. Both the Contractor and the Subcontractor shall be bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to the Subcontractor promptly and reasonably in advance of the required performance. The Contractor shall have the right to determine and, if necessary, change the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the Subcontract Work.

5.3 DELAYS AND EXTENSIONS OF TIME

5.3.1 OWNER-CAUSED DELAY: Subject to Subparagraph 5.3.2, 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 under the Subcontract Documents, and the Progress Schedule shall be revised accordingly.

5.3.2 CLAIMS RELATING TO OWNER: The Subcontractor agrees to initiate all claims for which the Owner 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 in sufficient time for the Contractor to initiate such claims against the Owner in accordance with the Subcontract Documents. At the Subcontractor's request and expense, 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. The Subcontractor agrees that the liability of the Contractor to the Subcontractor for any claim against the Owner under the Subcontract Documents is liquidated and limited to whatever is paid by the Owner to the Contractor for the Subcontractor's claim(s), less whatever amount is included as mark-up in said claim for the Contractor. The Contractor shall have no obligation to pay the Subcontractor for any change, additional cost, or extra Work incurred by the Subcontractor, nor to extend the time for performance for any changes, additions, or deletions caused by the Owner or Architect/Engineer unless such price change or time extension is approved in writing by the Owner or its authorized representative. The

Subcontractor further agrees that the remedy afforded herein with respect to disputes, which are properly the subject of claim(s) against the Owner, shall be the Subcontractor's sole and exclusive remedy with respect to said disputes.

5.3.3 CONTRACTOR-CAUSED DELAY: To the extent that the Subcontractor's claim or any part thereof is the responsibility of the Contractor, the Contractor's liability to the Subcontractor shall be limited to the extension of the Subcontractor's completion date, and the Contractor shall not be liable to the Subcontractor for payment of damage or compensation of any kind because of any delay, disruption, or hindrance, which is the subject matter of the Subcontractor's claim.

5.3.4 CLAIM RELATING TO CONTRACTOR: The Subcontractor shall give the Contractor written notice of all claims not included in Subparagraph 5.3.2 within seven (7) days of the Subcontractor's knowledge of the facts 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 5.3.2, shall be resolved in the manner provided in Article 11.

5.3.5 DAMAGES: If the Subcontract Documents provide for liquidated or other damages for delay beyond the completion date set forth in the Subcontract Documents, and such damages are assessed, the Contractor may assess a share of the damages against the Subcontractor in proportion to the subcontractor's share of the responsibility for the delay. However, the amount of such assessment shall not exceed the amount assessed against the Contractor. This paragraph 5.3 shall not limit the Subcontractor's liability to the Contractor for the Contractor's actual delay damages caused by the Subcontractor's delay. Contractor's actual delay damages would include, but not be limited to, recovery of the contractor's extra overhead and expenses related to managing or supervising work, interest expense, equipment rental expense, attorney's fees, and any other cost incurred by the Contractor which in any way relate to the Subcontractor's failure to timely perform the Subcontract Work. Neither payment of such amounts nor commencement of legal action by the Contractor to establish the Subcontractor's liability to pay such amounts shall relieve the Subcontractor from its obligation to otherwise fully perform this Agreement.

5.4 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

5.4.1 To the extent the Owner-Contractor Agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, the Contractor and 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; loss of financing, business and reputation; and loss of profit. Similarly, the Subcontractor shall obtain from its sub-subcontractor(s) mutual waivers of consequential damages that correspond to the 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 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 the Paragraph 5.4 shall preclude the imposition of such damages, if applicable in accordance with the requirements of the Subcontract Documents.

5.4.2 To the extent the Owner-Contractor Agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, damages for which the Contractor is liable to the Owner including those related to Subparagraph 9.1.1 are not consequential damages for the purpose of this waiver. Similarly, to the extent the Subcontractor-Sub-Subcontractor Agreement provides for a mutual waiver of consequential damages by the Owner and the Contractor, damages for which the Subcontractor is liable to lower-tiered parties due to the fault of the Owner or Contractor are not consequential damages for the purpose of this waiver.

ARTICLE 6 SUBCONTRACT AMOUNT

As full compensation for performance of the Agreement, the Contractor agrees to pay the Subcontractor in current funds for the satisfactory performance of the Subcontract Work subject to all applicable provisions of the Subcontract Documents.

- (a) the fixed-price of \$ **See Cover Sheet SUBCONTRACT – Form DCI.1** Dollars subject to additions and deductions as provided for in the Subcontract Documents; and/or
- (b) unit prices in accordance with the attached schedule of Unit Prices and estimated quantities, which is incorporated by reference and identified as Exhibit ; and/or\ **See Cover Sheet SUBCONTRACT – Form DCI.1**
- (c) time and material rates and prices in accordance with the attached Schedule of Labor and Material Costs which is incorporated by reference and identified as Exhibit. **See Cover Sheet SUBCONTRACT – Form DCI.1**

ARTICLE 7 CHANGES IN THE SUBCONTRACT WORK

7.1 SUBCONTRACT CHANGE ORDER: When the Contractor orders in writing, the Subcontractor, without nullifying this Agreement, shall make any and all changes in the Subcontract Work, which are within the general scope of the Agreement. Any adjustment in the Subcontract Amount or Subcontract Time shall be authorized by a Subcontract Change Order. No adjustments shall be made for any changes performed by the Subcontractor that have not been ordered by the Contractor. A Subcontract 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.

7.2 CONSTRUCTION CHANGE DIRECTIVE: To the extent that the Subcontract Documents provide for Construction Change Directives in the absence of agreement on the terms of Subcontract Change Order, the Subcontractor shall promptly comply with the Construction Change Directive and be entitled to apply for interim payment if the Subcontract Documents so provide.

7.3 UNKNOWN CONDITIONS: If, in the performance of the Subcontractor 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 work provided for in this Agreement, the Subcontract Amount and/or the Progress Schedule shall be equitably adjusted by a Subcontract Change Order within a reasonable time after the conditions are first observed. The adjustments the Subcontractor may receive, shall be limited by the adjustment the Contractor receives from the owner on behalf of the Subcontractor, or as otherwise provided under Subparagraph 5.3.2.

7.4 ADJUSTMENTS IN SUBCONTRACT AMOUNT: If a Subcontract Change Order required an adjustment in the Subcontract Amount, the adjustment shall be established by one of the following methods:

7.4.1 mutual acceptance of an itemized lump sum;

7.4.2 unit prices as indicated in the Subcontract Documents or as Subsequently agreed to by the parties; or

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

7.4.4 another method provided in the Subcontract Documents.

7.5 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 Work attributable to the change, including, in the case of an increase in the Subcontractor Amount, an allowance for overhead and profit of the percentage provided in Paragraph 7.6. The Subcontractor may contest the reasonableness of any adjustment determined by the Contractor. The Subcontractor shall maintain for the Contractor's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Subcontract Change Order:

7.5.1 labor cost, including social security, health, welfare, retirement and other fringe benefits as normally required, and state workers' compensation insurance;

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

7.5.3 costs of renting machinery and equipment other than hand tools;

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

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

7.6 ADJUSTMENTS: Adjustments shall be based on net change in Subcontractor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase in cost, and agreed upon sum for overhead and profit not to exceed 10%.

7.7 NO OBLIGATION TO PERFORM: The Subcontractor shall not perform changes in Subcontract Work until a Subcontract Change Order has been executed or written instructions have been issued in accordance with Paragraphs 7.2 and 7.9.

7.8 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.

7.9 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 of 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 8 PAYMENT

8.1 SCHEDULE OF VALUE: As a condition to payment, the Subcontractor shall provide a schedule of values satisfactory to the Contractor not more than ten (10) days from the date of execution of this Agreement.

8.1.1 The schedule of values shall list items for labor, services, and significant material items. Items should be listed in a manner to prevent any single item from exceeding \$250,000 in value.

8.2 PROGRESS PAYMENTS

8.2.1 APPLICATIONS: The Subcontractor's applications for payment shall be itemized and supported by substantiating data as required by the Subcontract Documents. If the Subcontractor is obligated to provide design services pursuant to Paragraph 3.8, the Subcontractor's application for payment shall show the Designer's fee and expenses as a separate cost item. The Subcontractor's applications shall be notarized and if allowed under the Subcontract Documents, may include properly authorized Subcontract Construction Change Directives. The Subcontractor's progress payment application for the Subcontract Work performed in the preceding payment period shall be submitted for approval of the Contractor in accordance with the schedule of values if required in Subparagraphs 8.2.2, 8.2.3, and 8.2.4. 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.

8.2.2 RETAINAGE: The rate of retainage shall be equal to the percentage retained from the Contractor's payment by the Owner for the Subcontract Work. If the Subcontract Work is satisfactory and the Subcontract Documents provide for reduction of retainage at a specified percentage of completion, the Subcontractor's retainage shall also be reduced when the Subcontract Work has attained the same percentage of completion and the Contractor's retainage for the Subcontract Work has been so reduced by the Owner.

8.2.3 TIME OF APPLICATION: The Subcontractor shall submit progress payment applications to the Contractor no later than the 20th day of the payment period for the Subcontract Work performed up to and including the 20th day of the payment period indicating Work completed and, to the extent allowed under Subparagraph 8.2.4, materials suitably stored during the preceding payment period. Unless the Owner requests a different date, in which case Subcontractor shall receive written notification.

8.2.4 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 to and suitably stored at the site or at some other location agreed upon in writing. Approval of payment applications of such stored items on or off the site, shall be conditioned upon submission by the Subcontractor of bills of sale and applicable insurance or other procedures satisfactory to the Owner and Contractor to establish the Owner's title to such materials and equipment, or otherwise to protect the Owner's and Contractor's interest including transportation to the site.

8.2.5 TIME OF PAYMENT: Receipt of payment by the Contractor from the Owner for the Subcontract Work is a condition precedent to payment by the Contractor to payment by Contractor's surety under the payment bond to the Subcontractor. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Contractor, for payment of Subcontract Work. Progress payments received from the Owner for the Subcontractor for satisfactory performance of the Subcontract Work shall be made no later than ten (10) days after receipt of the Contractor, of payment from the Owner for the Subcontract Work.

8.2.6 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 ten (10) days after the date such payment is due, as defined in Subparagraph 8.2.5, the Subcontractor, upon giving ten (10) 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 the Subcontractor's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate Subcontractor Change Order.

8.2.7 PAYMENT WITHHELD: The Contractor may reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or part, or withhold payment to the Subcontractor, as may be reasonably necessary to protect the Contractor from loss or damage based upon:

8.2.7.1 the Subcontractor's repeated failure to perform the Subcontract Work as required by this Agreement;

8.2.7.2 loss or damage arising out of or relating to this Agreement and caused by the Subcontractor to the Owner, Contractor or others to whom the Contractor may be liable;

8.2.7.3 the Subcontractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with the Subcontract Work.

8.2.7.4 rejected, nonconforming or defective Subcontract Work which has not been corrected in a timely fashion;

8.2.7.5 reasonable evidence of delay in performance of the Subcontract Work such that the Work will not be completed within the Subcontract Time, and that the unpaid balance of the Subcontract Amount is not sufficient to offset the liquidated damages or actual damages that may be sustained by the Contractor as a result of the anticipated delay caused by the Subcontractor.

8.2.7.6 reasonable evidence demonstrating that the unpaid balance of the Subcontract Amount is insufficient to cover the cost to complete the Subcontract Work.

8.2.7.7 third party claims involving the Subcontractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Subcontractor furnishes the Contractor with adequate security in the form of a surety bond, letter of credit or other collateral or commitment which are sufficient to discharge such claims, if established.

8.3 FINAL PAYMENT

8.3.1 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 8.3.2, the Contractor shall incorporate the Subcontractor's application for final payment into the Contractor's next application for payment to the Owner without delay, or notify the Subcontractor if there is a delay, and the reason therefore.

8.3.2 REQUIREMENT: Before the Contractor shall be required to incorporate the Subcontractor's application for final payment into the Contractor's next application for payment, the Subcontractor shall submit to the Contractor:

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

8.3.2.2 consent of surety to final payment, if required;

8.3.2.3 satisfaction of required closeout procedures;

8.3.2.4 certification that insurance required by the Subcontract Documents to remain in effect beyond final payment pursuant to Clauses 9.2.3.1 and 9.2.6 is in effect and will not be cancelled or allowed to expire without at least thirty (30) days written notice to the Contractor, unless a longer period is stipulated in this Agreement;

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

8.3.2.6 written warranties, equipment manuals, startup and testing required in Paragraph 3.28; and

8.3.2.7 as-built drawings, if required by the Subcontract Documents

8.3.3 TIME OF PAYMENT: Receipt of final payment by the Contractor from the Owner for the Subcontract Work is a condition precedent to final payment by the Contractor to the Subcontractor. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Contractor, for payment of Subcontract Work. Final payment for the Subcontract work shall be made to the Subcontractor:

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

8.3.3.2 within ten (10) days after receipt by the Contractor of final payment from the Owner for such Subcontract Work.

8.3.4 FINAL PAYMENT DELAY: 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. At the Subcontractor's request and expense, to the extent agreed upon in writing, the Contractor shall institute reasonable legal remedies to mitigate the damages and pursue payment of the Subcontractor's final payment including interest.

8.3.5. WAIVER OF CLAIMS: Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontract Work, but shall in no way relieve the Subcontractor of liability for the obligation assumed under Paragraphs 3.21 and 3.22, or for faulty or defective Work or services discovered after final payment.

8.4 LATE PAYMENT INTEREST: Progress payments or final payment due and unpaid under this Agreement, as defined in Subparagraphs 8.2.5, 8.3.3, and 8.3.4.

8.5 CONTINUING OBLIATIONS: Provided the Contractor is making payments on, or has made payments to the Subcontractor in accordance with the terms of this Agreement, the Subcontractor shall reimburse the Contractor for any costs and expenses for any claim, obligation or lien asserted before or after final payment is made that arises from the performance of the Subcontract Work. The Subcontractor shall reimburse the Contractor for cost and expenses including attorney's fees and cost and expenses incurred by the Contractor in satisfying, discharging or defending against any such claims, obligation or lien including any action brought or judgment recorded. In the event that any applicable law, statute, regulation or bond required the Subcontractor to take any action prior to the expiration of the reasonable time for payment reference in Subparagraph 8.2.5 in order to preserve or protect the Subcontractor's rights, if any, with respect to mechanic's lien or bond claims, then the Subcontractor may take that action prior to the expiration of the reasonable time for payment, and such action will not create the reimbursement obligation recited above, nor be in violation of the Agreement, or considered premature for purposes of preserving and protecting the Subcontractor's rights.

8.6 PAYMENT USE RESTRICTION: Payments received by the Subcontractor shall be used to satisfy the indebtedness owed by the Subcontractor to any person furnishing labor or materials, or both, for use in performing the Subcontract Work through the most current period applicable to progress payment received from the Contractor before it is used for any other purpose. Subcontractor agrees progress payments received are held in trust for its subcontractors and/or suppliers of labor and/or

materials for work. This provision shall bear on this Agreement only, and is not for the benefit of third parties. Moreover, it shall not be construed by the parties to this Agreement or third parties to require that dedicated sums of money or payments be deposited in separate accounts, or that there be other dedicated sums of money or payments be deposited in separate accounts, or that there be other restrictions on commingling of funds. In no event shall this provision be constructed to create a fiduciary duty on the part of the Contractor, or create any tort cause of action or liability for breach of trust, punitive damages, or other equitable remedy or liability for alleged breach on the part of the Contractor.

8.7 PAYMENT USE VERIFICATION: If the Contractor has reason to believe that the Subcontractor is not complying with the payment terms of this Agreement, the Contractor shall have the right to contact the Subcontractor's subcontractors and suppliers to ascertain whether they are being paid by the Subcontractor in accordance with this Agreement.

8.8 PARTIAL LIEN WAIVERS AND AFFIDAVITS: As a prerequisite for payments, the Subcontractor shall provide, in a form satisfactory to the Owner and Contractor, partial lien or claim waivers in the amount of the application for payment and affidavits covering its subcontractors and suppliers for completed Subcontract Work. Such waivers may be conditional upon payment. In no event shall the Contractor require the Subcontractor to provide an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

8.9 SUBCONTRACTOR PAYMENT FAILURE: Upon payment by the Contractor, the Subcontractor shall promptly pay its subcontractors and suppliers the amounts to which they are entitled. In the event the Contractor has reason to believe that labor, material or other obligations incurred in the performance of the Subcontract Work are not being paid, the Contractor may give written notice of a potential claim or lien to the Subcontractor and may take any steps deemed necessary to assure that progress payments are utilized to pay such obligations, including but not limited to, the issuance of joint checks. If upon receipt of notice, the Subcontractor does not (a) supply evidence to the satisfaction of the Contractor that the moneys owing have been paid; or (b) post a bond indemnifying the Owner, the Contractor, the Contractor's surety, if any, and the premises from a claim or lien, the Contractor shall have the right to withhold from any payments due or to become due to the Subcontractor a reasonable amount to protect the Contractor from any and all loss, damage or expense including attorneys' fees that may arise out of, or relate to any such claim or lien. In addition to its right to terminate this Agreement for default arising from the Subcontractor's failure to promptly pay its subcontractors and suppliers as set forth herein, the Contractor shall have the right to pay any past due obligations of the Subcontractor which arise out of the Subcontractor's performance of this Agreement, either by check made payable directly to any of the Subcontractor's creditors asserting a claim, or by check made payable jointly to the Subcontractor and any of the Subcontractor's creditors asserting a claim. All such payments shall apply as payment against any amount that the Contractor may otherwise owe the Subcontractor pursuant to this Agreement. This provision shall bear on this Agreement only, and if not for the benefit of third parties. In no event shall this provision be construed to create a duty on Contractor to pay Subcontractor's creditor.

8.10 SUBCONTRACTOR ASSIGNMENT OF PAYMENTS: The Subcontractor shall not assign any moneys due or to become due under this Agreement, without 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 moneys 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.

8.11 PAYMENT NOT ACCEPTANCE: Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Subcontract Work.

ARTICLE 9

INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION

9.1 INDEMNITY

9.1.1 INDEMNITY: To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless the Contractor, the Contractor's other subcontractors, the Architect/Engineer, the Owner and their agents, consultants and employees (the Indemnities) from all claims that may arise from any breach, violation or default by contractor or its employees, agents, representatives, Subcontractors, or Sub subcontractors, or any employee, agents, representatives or contractors of any foregoing, of contractors obligations under the contract documents including, without limitation, any violation of any law, statute, ordinance, order, rule or regulation, including, without limitations, any Environmental Law and the Storm Water Requirements.

9.1.2 NO LIMITATION ON LIABILITY: In any and all claims against the Indemnities by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

9.2 INSURANCE:

9.2.1 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.

9.2.2 MINIMUM LIMITS OF LIABILITY: The subcontractor shall maintain insurance policies in a company satisfactory to the Contractor. The insurance policies shall have the limits of liability (at a minimum) and contain the terms and conditions set forth in Exhibit 9.2.2.1.

9.2.3. PROFESSIONAL LIABILITY INSURANCE

9.2.3.1 PROFESSIONAL LIABILITY INSURANCE: The subcontractor shall require the Designer(s) to maintain Project Specific Professional Liability Insurance with a company it from satisfactory to the Contractor. The insurance policies shall have the limits of liability (at a minimum) and contain the terms and conditions set forth in Exhibit 9.2.2.1.

9.2.4 NUMBER OF POLICIES: Commercial General Liability Insurance and other insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.

9.2.5 CANCELLATION, RENEWAL AND MODIFICATION: The Subcontractor shall maintain in effect, all insurance coverage required under this Agreement at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor. The policies shall contain a provision that coverage will not be cancelled or not renewed until at least thirty (30) days prior written notice has been given to the Contractor. Certificates of insurance showing required coverage to be in force pursuant to Subparagraph 9.2.2 shall be filed with the Contractor prior to commencement of the Subcontract Work. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, the Contractor may purchase such coverage as desired for the Contractor's benefit and charge the expense to the Subcontractor, or terminate this Agreement.

9.2.6 CONTINUATION OF COVERAGE: The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least one (1) year after either ninety (90) days following Substantial Completion of the Work, or final payment to the Contractor, whichever is earlier. The Subcontractor shall furnish the Contractor evidence of such insurance at final payment, and one year from final payment.

9.2.7 BUILDER’S RISK INSURANCE

9.2.7.1 Upon written request of the Subcontractor, the Contractor shall provide the Subcontractor with a copy of the Builder’s Risk policy of insurance or any other property or equipment insurance in force for the Project and procured by the Owner or Contractor. The Contractor will advise the Subcontractor if a Builder’s Risk policy of insurance is not in force.

9.2.7.2 If the Owner or Contractor has not purchase Builder’s Risk insurance satisfactory to the Subcontractor, the Subcontractor may procure such insurance as will protect the interests of the Subcontractor, its subcontractors and their subcontractors in the Subcontract Work.

9.2.7.3 If not covered under the Builder’s Risk policy of insurance or any other property or equipment insurance required by the Subcontract Documents, the Subcontractor shall procure and maintain at the Subcontractor’s own expense, property and equipment insurance for the Subcontract Work including portions of the Subcontract Work stored off the site or in transit, when such portions of the Subcontract Work are to be included in an application for payment under Article 8.

9.2.8 WAIVER OF SUBROGATION:

9.2.8.1 The Contractor and Subcontractor waive all rights against each other, the Owner, the Architect/Engineer, and any of their respective consultants, subcontractors, and sub-subcontractors, agents and employees, for damages caused by perils, to the extent covered by the proceeds of the insurance provide in Clause 9.2.7.1, except such rights as they may have to the insurance proceeds. The Subcontractor shall require similar waivers form its subcontractors.

9.2.9 ENDORSEMENT: If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

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 refuses or fails to supply enough properly skilled workers, proper materials, or maintain the Progress Schedule, 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 three (3) days after written notification, to provide the Contractor a written plan setting forth the steps it intends to take to cure the default and 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:

10.1.1.1 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.

10.1.1.2 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 Work, and charge the cost to the Subcontractor as provided under 10.1.1.1; and/or

10.1.1.3 withhold any payment 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 any 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.

10.1.2 TERMINATION BY CONTRACTOR: If the Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) days after written notification issued under Subparagraph 10.1.1, then the Contractor may, in lieu of or in addition to Subparagraph 10.1.1, issue a second written notification to the Subcontractor and its surety, if any. Such notice shall state that if the Subcontractor fails to commence and continue correction of a default within seven (7) days of the written notification, the Agreement will be deemed terminated. A written notice of termination shall be issued by the Contractor to the Subcontractor at the time the Subcontractor is terminated. The Contractor may furnish those materials, equipment and/or employ such workers or subcontractors as the Contractor deems necessary to maintain the orderly progress of the Work. All costs incurred by the Contractor in performing the Subcontract Work, including reasonable overhead, profit and attorneys' fees, costs and expenses, shall be deducted from any moneys due or to become due the Subcontractor. The Subcontractor shall be liable for the Payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. At the Subcontractor's request, the Contractor shall provide a detailed accounting of the costs to finish the Subcontract Work.

10.1.2.1 The Contractor shall have the right to terminate for convenience this entire Subcontract or any portion thereof, at any time, and for any reason, upon written notice to the Subcontractor specifying the extent to which this Subcontract is terminated, and the date upon which such termination becomes effective. After receipt of the Contractor's Notice of Termination for Convenience, the Subcontractor agrees to (1) stop work on the Subcontract Work or any portion thereof on the date to the extend specified, (2) place no further orders or subcontract for materials, services or facilities except as may be necessary for completion of that portion of Work that is not terminated, (3) transfer title and deliver to the Contractor any materials, work in process, completed work and supplies for which the Subcontractor has been paid, and (4) complete performance of any part of the Work required by this Subcontract that is not terminated by the Contractor's Notice of Termination for Convenience. In the event the Owner-Contractor Agreement is terminated in whole or part, for any reason whatsoever, including default termination by either the Owner or the Contractor, the Contractor shall only be liable to the Subcontractor for whatever amount the Owner pays the Contractor for Work performed by the Subcontractor. If the Contractor terminates this Subcontract for its convenience either in whole or part but the Owner-Contractor Agreement is not similarly terminated, the Contractor's liability to the Subcontractor for any convenience termination shall be limited to that amount equal to the percentage of Work properly completed by the Subcontractor less any amounts previously paid the Subcontractor and less any expenses incurred by the Contractor arising from or related to the Subcontractor's performance. The Subcontractor expressly agrees that as a condition precedent to receiving any funds from the Contractor for the convenience termination of the Owner, the Contractor shall have received payment for said Work from the Owner. In no event shall the Contractor be liable for the loss of anticipated profits or consequential damages arising from the convenience termination.

10.1.3 USE OF SUBCONTRACTOR'S EQUIPMENT. If the Contractor performs Work under this Article, either directly or through other subcontractors, the Contractor or other subcontractors shall have the right to take and use any materials, implements, equipment, appliances or tools furnished by, or belonging to the Subcontractor and located at the Project site for the purpose of completing any remaining Subcontract Work. Immediately upon completion of the Subcontract Work, any remaining materials, implements, equipment, appliances or tools not consumed or incorporated in performance of the Subcontract Work, and furnished by, belonging to, or delivered to the Project by or on behalf of the Subcontractor, shall be returned to the Subcontractor in substantially the same condition as when they were taken, normal wear and tear expected.

10.2 BANKRUPTCY

10.2.1 TERMINATION ABSENT CURE: If the Subcontractor files a petition under the Bankruptcy Code; 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 the Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

10.2.2 INTERIM REMEDIES: If the Subcontractor is not performing in accordance with the Progress Schedule 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 reject 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 Progress Schedule. The Contractor may offset against any sum 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 attorneys' fees. The Subcontractor shall be liable for the payment of any amounts by which costs incurred may exceed the unpaid balance of the Subcontract Price.

10.3 SUSPENSION BY OWNER: Should the Owner suspend the Work or any part which includes the Subcontract Work and such suspension is not due to any act or omission of the Contractor, or any other person or entity for whose acts or omissions the Contractor may be liable, 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 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, within three (3) days of the termination, and upon written notification, the 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.

10.5 CONTINGENT ASSIGNMENT OF THIS AGREEMENT: The Contractor's contingent assignment of the Agreement to the Owner, as provided in the Owner-Contractor Agreement, is effective when the Owner has terminated the Owner-Contractor Agreement 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. Subcontractor consents to such assignment and agrees to be bound to the assignee by the terms of this Agreement, provided that the assignee fulfils the obligations of the Contractor.

10.6 TERMINATION BY CONTRACTOR: The Contractor may order the Subcontractor in writing to suspend 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. Phased Work or interruptions of the Subcontract Work for short periods of time shall not be considered a suspension. The Subcontractor, after receipt of the Contractor's orders, shall notify the Contractor in writing in sufficient time to permit the Contractor to provide timely notice to the Owner in accordance with the Owner-Contractor Agreement of the effect of such order upon the Subcontract Work. The Subcontract Amount or Progress Schedule, shall be adjusted by Subcontract Change Order, for any increase in the time or cost of performance of this Agreement caused by such suspension. No claim under this Paragraph shall be allowed by any costs incurred more than fourteen (14) days prior to the Subcontractor's notice to the Contractor. Neither the Subcontract Amount nor the Progress Schedule shall be adjusted for any suspension, to the extent that performance would have been suspended, due in whole or in part to the fault or negligence of the Subcontractor or by a cause for which the Subcontractor would have been responsible. The Subcontract Amount shall not be adjusted for any suspension to the extent that performance would have been suspended by a cause for which the Subcontractor would have been entitled only to a time extension under this Agreement.

10.7 WRONGFUL EXERCISE: If the Contractor wrongfully exercises any option under this Article, the Contractor shall be liable to the Subcontractor solely for the reasonable value of the Subcontract Work performed by the Subcontractor prior to the Contractor's wrongful action, including reasonable overhead and profit on the Subcontract Work performed, less prior payments made, together with reasonable overhead and profit on the Subcontract Work not executed, and other costs incurred by reason of such actions.

10.8 TERMINATION BY SUBCONTRACTOR: If the Subcontract Work has been stopped for thirty (30) days because the subcontractor has not received progress payments that are due or has been abandoned or suspended for an unreasonable period of time not due to the fault or neglect of the Subcontractor, then the Subcontractor may terminate this Agreement upon giving the Contractor seven (7) days' written notice. Upon such termination, Subcontractor shall be entitled to recover from the Contractor payment for all Subcontract Work satisfactorily performed for which the Owner has paid the Contractor. The Contractor's liability for any other damages claimed by the Subcontractor under such circumstances shall be extinguished by the Contractor pursuing said damages and claims against the Owner, on the Subcontractor's behalf, in the manner provided for in Subparagraph 10.3 and 10.4 of this agreement.

ARTICLE 11 DISPUTE RESOLUTION

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. 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) days of filing of the request. Either party may terminate the mediation at any time after the first session, but the written notice of 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 finding dispute resolution.

11.2 WORK CONTINUATION AND PAYMENT: Unless otherwise agreed in writing, the Subcontractor shall continue the Subcontract Work and maintain the Progress Schedule during any dispute resolution proceedings. If the Subcontractor continues to perform, the Contractor shall continue to make payments in accordance with this Agreement.

11.3 NO LIMITATION OF RIGHTS TO REMEDIES: Nothing in this Article shall limit any rights or remedies not expressly waived by the Subcontractor which the Subcontractor may have under lien laws of payment bonds. However, in the event the parties agree to arbitrate the dispute, they also agree that they will not oppose a motion to stay any civil action to enforce a lien until resolution of the arbitration, which resolution will be binding on the parties with regard to the lien action.

11.4 MULTIPARTY PROCEEDING: The parties agree that to the extent permitted by Subcontract Documents, all parties necessary to resolve a claim shall be parties to the same dispute resolution proceedings. To the extent disputes between the Contractor and 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 Owner.

11.5 DISPUTES BETWEEN CONTRACTOR AND SUBCONTRACTOR: In the event that the provisions for resolution of disputes between the Contractor and the Owner contained in the Subcontract Documents do not permit consolidation of 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 shall be submitted again to mediation pursuant to Paragraph 11.1. Any disputes not resolved by mediation shall be decided in the manner selected in the Agreement between the Owner and the Contractor.

11.6 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 reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such dispute resolution process.

ARTICLE 12 MISCELLANEOUS PROVISIONS

12.1 GOVERNING LAW: This Agreement shall be governed by the laws of the State of Kansas, without regard to its conflict of law principles. All disputes under or arising out of this Agreement are subject to the exclusive jurisdiction and venue of the District Court of Montgomery County, Kansas. However, to the extent that the provisions of the Owner-Contractor Agreement are incorporated herein, said provisions will be governed by the laws of the state as provided in the Owner-Contractor Agreement.

12.2 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.

12.3 NO WAIVER OF PERFORMANCE: 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 of its rights, shall not be construed as a waiver of relinquishment of any term, covenant, condition or right with respect to further performance.

12.4 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.

12.5 OTHER PROVISIONS AND DOCUMENTS: Other provisions and documents applicable to the Subcontract Work are set forth in Exhibit NA.

12.6 JOINT DRAFTING: The parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

ARTICLE 13 EXISTING SUBCONTRACT DOCUMENT

As defined in Paragraph 2.3, the following Inclusions/Exclusions are a part of this Agreement:

Addenda
See Cover Sheet SUBCONTRACT – Form DCI.1

Exhibits
EXHIBIT 9.2.2.1 Insurance Minimum Requirement
See Cover Sheet for additional EXHIBITS

Inclusions	Item Number
See Cover Sheet SUBCONTRACT – Form DCI.1	

Exclusions	Item Number
See Cover Sheet SUBCONTRACT – Form DCI.1	

Alternates	Description	Notes
See Cover Sheet		

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

CONTRACTOR: Decker Construction, Inc.

BY: _____

PRINT NAME: _____

PRINT TITLE: _____

DATE: _____

SUBCONTRACTOR:

BY: _____

PRINT NAME: _____

PRINT TITLE: _____

DATE: _____

EXHIBIT 9.2.2.1

Insurance Minimum Requirement

The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability.

1. **Commercial General Liability (CGA)** with limits of insurance not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.
 - a. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.
 - b. CGL coverage shall be written on ISO Occurrence for CG 00 01 1093 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal advertising injury.
 - c. General Contractor, Owner and all other parties required of the General Contractor, shall be included as additional insured's with completed operations on the CGA, using ISO Additional Insured Endorsement CG 20 10 11 85 or CG 2010 (10/93) AND CG 20 37 or CG2033 and CG 2037 or an endorsement providing equivalent coverage to the additional insured's. This insurance for the additional insured's shall be as broad as the coverage provided for the named insured subcontractor. It shall apply as Primary and non-contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.
 - d. Subcontractor shall maintain CGL coverage for itself and all additional insured's for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 2 years after the completion of the Work.
 - e. Provide Stop Gap Coverage, if applicable, for the following states: North Dakota, Ohio, Washington, West Virginia or Wyoming.
2. **Automobile Liability**
 - a. Business Auto Liability with limits of at least \$1,000,000 each accident.
 - b. Business Auto coverage must include coverage for liability arising out of all owned, leased,, hired and non-owned automobiles.
 - c. General Contractor, Owner and all other parties required of the General Contractor, shall be included as Primary and Non-Contributory Additional insured's on the auto policy.
3. **Commercial Umbrella**
 - a. Umbrella limits must be at least \$1,000,000.
 - b. Umbrella coverage must include as insured's all entitles that are additional insured's on the CGL.
 - c. Umbrella coverage for such additional insured's shall apply as primary before any other insurance of self-insurance, including any deductible, maintained by, or provided to, the additional insured other than CGL, Auto Liability and Employers Liability coverage's maintained by the Subcontractor.
4. **Workers Compensation and Employers Liability**
 - a. Employers Liability Insurance limits of at least \$500,000 each accident for bodily injury by accident and \$500,000 each accident for injury by disease.
 - b. Where applicable, U.S. Longshore and Harborworkers Compensation Act Endorsement shall be attached to the policy.

- c. Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.
- d. Maintain monopolistic coverage, if applicable, for the following states: North Dakota, Ohio, Washington, West Virginia or Wyoming.

5. Builder's Risk Insurance

- a. Upon Written request of the Subcontractor, the Contractor shall provide the Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the Project and procured by the Owner or Contractor.
- b. If the owner or Contractor has not purchased Builder's Risk insurance satisfactory to the Subcontractor, the Subcontractor may procure such insurance as will protect the interests of the Subcontractor, its subcontractors and their subcontractors in the Subcontract Work.
- c. If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Subcontract documents, the Subcontractor shall procure and maintain at the Subcontractor's own expense, property and equipment insurance for the Subcontract Work including portions of the Subcontract Work stored off the site or in transit, when such portions of the Subcontract Work are to be included in an application for payment under Article 8.

6. Professional Liability Insurance

- a. The Subcontractor shall require the Designer(s) to maintain Project Specific Professional Liability Insurance with a company satisfactory to the Contractor, including contractual liability insurance against the liability assumed in Paragraph 3.8, and including coverage for any professional liability caused by any of the Designer's (s') consultants. Said insurance shall have specific minimum limits as set forth below:

Limit of \$1,000,000 per claim

General Aggregate of \$2,000,000 for the subcontract services rendered.

The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all subcontract services rendered by the Designer. Said insurance shall be continued in effect with an extended period of one (1) year following final payment to the Designer.

Such insurance shall have a maximum deductible amount of \$25,000 per occurrence.

The Subcontractor shall require the Designer to furnish to the Subcontractor and Contractor, before the Designer commences its services, a copy of its professional liability policy evidencing the coverage required in this Paragraph. No policy shall be cancelled or modified without thirty (30) days prior written notice to the Subcontractor and Contractor.

Waiver of Subrogation

Subcontractor waives all rights against the Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability, builder's risk, or workers compensation and employers liability insurance maintained per requirement stated above and to the fullest extent allowed by law.

Number of Policies

Commercial General Liability Insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.

Cancellation, Renewal and Modification

The Subcontractor shall maintain in effect, all insurance coverage required under this Agreement at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor. The policies shall contain a provision that coverage will not be cancelled or not renewed until at least thirty (30) days prior written notice has been given to the Contractor. Certificates of Insurance showing required coverage to be in force pursuant to Subparagraph 9.2.2 shall be filed with the Contractor prior to commencement of the Subcontract Work. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, the Contractor may purchase such coverage as desired for the Contractor's benefit and charge the expense to the Subcontractor, or terminate this Agreement.

Continuation of Coverage

The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least two (2) years after either ninety (90) days following Substantial completion of the Work, or final payment to the Contractor, whichever is earlier. The Subcontractor shall furnish the Contractor evidence of such insurance at final payment, and one year from final payment.

Requirements in the Prime Contract and other Contract Documents are also the responsibility of the Subcontractor and in addition to these requirements. It is the responsibility of the Subcontractor to know what is required of Subcontractor.

**Oklahoma Union Schools
Oklahoma 2018 Bond Issue**

Section 002100

**Decker Construction, Inc. – Sample Subcontractor
DCI.1**



SUBCONTRACT - Form DCI.1

Now, in consideration of the terms and conditions stated herein, the adequacy and receipt of which is hereby acknowledged, the Subcontractor and Contractor agree as follows:

Subcontractor: SUBCONTRACTOR NAME
Street Address
City, State ZIP

Subcontract #: S18028-01
Date: 01/02/2019
Job: 18-028 OKU 2018 Bond Issue
Job Address: Route 1, Box 377-7
South Coffeyville, OK 74072

Ph.:

Contractor: DECKER CONSTRUCTION, INC.
1215 E. 8TH
PO BOX 254
COFFEYVILLE, KS 67337

Retainage % 5.00
Exhibit A Subcontract on file Dated

Job Information: The following contract documents are a part of this contract and are incorporated by reference and made a part hereof as if fully set forth herein:

Owner: Oklahoma Union Schools
Route 1, Box 377-7
South Coffeyville, OK 74072

Ph.:

Exhibit A Standard Form of Agreement Between Contractor and Subcontractor

Subcontractor acknowledges receipt of all the contract documents.

Description:

THE SUBCONTRACTOR SHALL PROVIDE ALL LABOR, MATERIALS AND EQUIPMENT NECESSARY TO COMPLETE THE SCOPE OF WORK CONSISTANT WITH THE CONTRACTOR'S OBLIGATIONS FOUND IN THE TERMS AND CONDITIONS OF THE CONTRACT BETWEEN OWNER AND CONTRACTOR, INCLUDING BUT NOT LIMITED TO THE GENERAL CONDITIONS, SPECIAL CONDITIONS, PLANS, DRAWINGS AND SPECIFICATIONS.

THE SCOPE OF WORK IS AS FOLLOWS:

Total Subcontract Amount:

Inclusions:

Exclusions:

Date

DECKER CONSTRUCTION, INC.

Date

**Oklahoma Union School District
Oklahoma 2018 Bond Issue**

Section 003000

Decker Construction, Inc. – Sample Purchase Order



Purchase Order

To: Supplier Name

Order #: P18028-01
 Date: 01/02/2019
 Job: 18-028 OKU 2018 Bond Issue

Contact:
 Phone:
 Fax:

Ship To: Route 1, Box 377-7
 South Coffeyville, OK 74072
Call prior to delivery to verify address

Invoice in Triplicate to: Decker Construction, Inc.
 PO Box 254
 Coffeyville, KS 67337

Ordered By	Delivery Date	Ship Via	F.O.B.	Terms
Jason McVey			Jobsite	Net 30

Furnish the following materials for construction of OKU 2018 Bond Issue at **SOUTH COFFEYVILLE, OK**, contract dated January 2, 2019 and in accordance with plans and specifications prepared by **Ambler Architects**. Shop drawings, material lists, samples, test reports will be required and 1 set(s) must be furnished in electronic format for approval by the architect within 10 days of purchase order.

Project is tax exempt. Sales Tax to be excluded. Payment to be made within 30 days after delivery of materials and receipt of invoice, less retainage in the amount of 0%. Final payment will be due on acceptance of material by the architect and vendor's full compliance with general condition number 4 if applicable.

Job	Cost Code	Cat	Description	Amount
18-028		M		

Total: \$ -

Items Included:

Exclusions:

On vendor's failure to comply with schedule of delivery, we shall have the option to:

- (A) To charge vendor's account **(\$250)** per day during the delay as liquidated damages, or
- (B) Purchase materials on the open market and charge vendor's account with their costs.

GENERAL CONDITIONS

1. If materials delivered are unacceptable, Contractor, at its option, may (a) reject the same, or (b) cause their correction, charging Vendor's account with the cost thereof.
2. Acceptance of any of said materials and payment therefore shall not relieve Vendor from Liability for defects which may thereafter be discovered.
3. Contractor and Vendor agree to be bound by the terms of the contract between the Owner and the Contractor, and the general conditions, special conditions, the plans, drawings and specifications as far as applicable to this Purchase Order. The Vendor also agrees:
 - (a) To be bound to the Contractor by the terms of the Contract between Owner and Contractor, and the general conditions, special conditions, plans, drawings and specifications, constituting a part thereof, and to assume toward Contractor all the obligations and responsibilities that Contractor, by those documents, assumes toward the owner insofar as they are applicable to the materials to be furnished under this Purchase Order.
 - (b) To maintain Workmen's Compensation, contractual liability, public liability, and such other insurances in such amounts as may be required of the Contractor in general conditions and special conditions, of the Contract between Owner and Contractor, and notwithstanding such insurance, to indemnify and save harmless the contractor from any and all claims which may arise from Vendor's obligations under this Purchase Order, and to provide Contractor with certificates of such insurance, such certificates to be furnished within (10) days after the signing of this Purchase Order and to provide for ten (10) days' notice to Contractor before cancellation.
 - (c) To promptly pay when due for all labor, equipment, materials and supplies used or consumed in completing this Purchase Order, and to save Contractor harmless from any claim, lien, judgment, court costs and expenses incurred on account of Vendor's failure to comply with the terms of this Purchase Order.
4. (a) Vendor agrees to indemnify and hold harmless the Contractor from any and all claims, demands, actions and remedies of collection available under law, which may be imposed or attempted against Contractor as a result of any actual or alleged liability of Contractor for payment of contributions, penalties of interest due from Vendor under the terms of the Employment Security Law of the State of Kansas, and especially Chapter 247, Section 1(b)(3), Laws of Kansas 1961, or any amendments thereof or supplemental thereto, and to furnish Contractor with the affidavit of the Labor Commissioner of the State of Kansas that Vendor has paid all contributions, penalties and interest which Vendor is obligated by the Employment Security Law of Kansas to pay on account of the work covered by this Purchase Order.
 - (b) Vendor further agrees that if it is necessary for Contractor to make any payments under the terms of the above quoted section of the Employment Security Law, and that if the amount so retained pending receipt of an affidavit from the Labor Commissioner is inadequate to make full payment thereof, with the result that Contractor is required to pay such additional amount, Contractor may maintain an action against Vendor for the recovery of any money so paid, together with interest at the highest legal rate from the date of such payment.
5. Vendor shall not assign this Purchase Order or subcontract any of the work hereunder without prior written consent of the Contractor.

Decker Construction, Inc.

Date

Supplier Name

Date

**Oklahoma Union School District
Oklahoma 2018 Bond Issue**

Section 005000

Decker Construction, Inc. – Sample Subcontractor Application for Payment

SUB-CONTRACTOR'S APPLICATION FOR PAYMENT - FORM DCI.2

TO CONTRACTOR: **Decker Construction, Inc.**
PO Box 254
Coffeyville, KS 67337

FROM SUB-CONTRACTOR: **SUBCONTRACTOR NAME**
Street Address
City, State Zip

PROJECT: **OKU 2018 Bond Issue**
Route 1, Box 377-7
South Coffeyville, OK 74072

PAYMENT REQUEST NO.: **1**
 PERIOD TO: **01/02/2019**
 SUB-CONTRACT NO.: **TO BE ISSUED BY DCI**
 DCI JOB NUMBER: **18-028**

STATEMENT OF CONTRACT ACCOUNT:

1.	Original Contract Price (See attached Column C Total)	\$	134,000.00
2.	Approved Change Orders (See attached Column D Total)	\$	16,000.00
3.	Adjusted Contract Price (Line 1 +/- 2)	\$	150,000.00
4.	Total Work Completed & Materials Stored To Date (See attached Column H Total)	\$	14,500.00
5.	Less Amount Retained (See attached Column J Total)	\$	(725.00)
6.	Total Earned Less Retainage (Line 4 less line 5 Total)	\$	13,775.00
7.	Less Total Previously Certified (Line 6 from prior Application)	\$	-
8.	AMOUNT DUE THIS REQUEST	\$	13,775.00
9.	Bal. To Finish, Incl. Retainage (Line 3 less Line 6)	\$	136,225.00

CERTIFICATE OF THE SUB-CONTRACTOR

I hereby certify that the work performed and the materials supplied to date, as shown above, represent the actual value of the Sub-Contractors' performance under the terms of the Agreement (and all authorized changes thereto) between the undersigned and **Decker Construction, Inc.** relating to the above-referenced project.

I also certify that payments, less applicable retention, have been made through the period covered by previous payments received from the Owner to all Subcontractors, and for all materials and labor used in or in connection with the performance of the Agreement. I further certify that I have complied with Federal, State and local tax laws, including Social Security laws, Unemployment Compensation laws, and Workers' Compensation laws insofar as applicable to the performance of the Agreement.

Date 01/02/19

Subscribed and sworn before me this
 2nd day of January, 2019.

 Notary Public

SUBCONTRACTOR NAME

 SUB-CONTRACTOR

 By: (authorized signature)

 Title

Date 01/02/19

