



As of the date first stated above (hereinafter the "Effective Date"), WINTER JOHNSON and Subcontractor agree for themselves, their successors and assigns, as follows:

## 1. CONTRACT DOCUMENTS

1.1 "Contract Documents" Defined. The term "Contract Documents" as used in this Agreement means the following: (1) this Subcontract between WINTER JOHNSON and Subcontractor, all of its Exhibits, and all documents referenced in any of them, all of which form and are a part of this Subcontract; as well as all subsequently issued written change orders, written amendments, or written modifications to this Subcontract signed by an authorized representative of WINTER JOHNSON (the "Subcontract Documents"); and (2) the Prime Contract between WINTER JOHNSON and the Owner and all other documents incorporated by reference into the Prime Contract, including, but not limited to, all drawings, specifications, general conditions and supplemental conditions, as well as all subsequently issued change orders, amendments or modifications to the Prime Contract. **Each Subcontractor shall make similar copies of such document available to its sub-subcontractors.**

1.2 Exhibits. The following exhibits are incorporated into, and form part of, this Subcontract:

- Exhibit A Supplementary Conditions
- Exhibit B Scope of Work
- Exhibit C Drawings and Specifications
- Exhibit D Subcontractor's Application for Payment
- Exhibit E Interim Lien Waiver
- Exhibit F Waiver and Release Upon Final Payment
- Exhibit G Subcontractor Payment Bond
- Exhibit H Subcontractor Performance Bond
- Exhibit I Immigration and Security Affidavit
- Exhibit J Insurance Requirements and Certificate of Insurance
- Exhibit K Subcontractor Warranty
- Exhibit L Sales Tax Payment Affidavit
- Exhibit M Additional Provisions for Projects Requiring LEED Certification
- Exhibit N Additional Provisions for Subcontracts Requiring Design/Engineering
- Exhibit O Extra Work / Time & Material Form
- Exhibit P Joint Check Agreement
- Exhibit Q Subcontractor Guaranty (if required)

1.3 Subcontractor Bound by Prime Contract. Subcontractor assumes toward WINTER JOHNSON all

the duties and obligations that WINTER JOHNSON has by the Contract Documents assumed toward Owner. Subcontractor shall be bound by the interpretations and decisions of the Architect and the Owner to the same extent as WINTER JOHNSON may be bound by them under the Contract Documents.

1.4 Review of Prime Contract. WINTER JOHNSON shall furnish Subcontractor a copy of the Prime Contract upon written request, although certain confidential business terms and conditions may be redacted. **Subcontractor shall identify any terms and conditions of the Subcontract which may be at variance with the Prime Contract.**

1.5 Conflicts in Contract Documents. If there is a conflict within or between the Contract Documents involving an obligation, a duty, or the quality or quantity of Work required, then the Contract Document imposing the most stringent obligation or duty and the highest quality or greatest quantity shall control. In the event of a conflict between this Agreement and any other documents that comprise the Subcontract Documents, then the Document imposing the most stringent obligation or duty and the highest quality or greatest quantity shall control.

1.6 Methods of Notice. All written notices shall be deemed given if delivered in any one of the following ways: (a) certified or registered mail, with return receipt requested; (b) overnight delivery via the United States Postal Service, Federal Express, UPS or equivalent, with written confirmation of delivery; or (c) via electronic mail. Notice given under this Subcontract shall be made as follows stating in the subject line "WRITTEN NOTICE":

To WINTER JOHNSON:

Carrie Campbell  
5616 Peachtree Road, Suite 100  
Atlanta, Georgia 30341  
CCampbell@Winter-Construction.com

To Subcontractor:

**[Enter name, address and contact info including email]**

If either party wishes to change its person or place for notice, then such information shall be communicated immediately in writing to the other party.

## 2. WORK

2.1 Subcontractor's Work. WINTER JOHNSON employs Subcontractor as an independent contractor, to perform and furnish all labor, supervision, services, materials, equipment, tools, scaffolds, transportation, storage, incidentals, taxes, insurance and all other things necessary to perform the work identified and described in **EXHIBIT B** hereto (the "Subcontractor's Work"), which is a portion of the entire work required of WINTER JOHNSON by the Prime Contract (the "Prime Contract Work").



2.2 Completeness of Drawings and Specifications. Subcontractor agrees to furnish and install all items reasonably inferable from the Contract Documents for the proper completion of Subcontractor's Work without adjustment to the Subcontract Price.

2.3 Local Conditions. Subcontractor acknowledges that it has (a) become familiar with the Contract Documents; (b) adequately investigated the general nature and conditions of the Project site and locality; (c) familiarized itself with labor and material availability and local market conditions affecting the Subcontractor's Work. Subcontractor enters into this Subcontract based on its own investigation and evaluation of said conditions and Contract Documents.

2.4 Compliance with Laws, Regulations and Codes. Subcontractor acknowledges that it is familiar with all Applicable Laws, including those in force on the Effective Date that relate to the Subcontractor's Work. If Subcontractor's Work fails to comply with Applicable Laws, including, but not limited to, applicable building codes and local ordinances, Subcontractor shall bring such Work into compliance at no additional cost to WINTER JOHNSON or the Owner.

2.4.1. If applicable, Subcontractor shall comply with NPDES permit requirements and will adhere to the Erosion, Sedimentation & Pollution Control Plan for the Project.

2.4.2. Subcontractor shall be responsible for compliance with all applicable federal, state, and local natural resource and environmental protection requirements, codes and regulations. In addition, Subcontractor shall: (1) not provide nor allow any of its lower-tier subcontractors or suppliers to provide to the Project hazardous wastes as that term is defined by applicable federal, state, and local agencies, rules or regulations. Upon notice from Owner, Architect or WINTER JOHNSON, Subcontractor shall remove any such products or materials provided in violation of this paragraph, at its sole responsibility and expense.

2.5 Assignment and Subcontracting. This Agreement shall not be subcontracted or assigned, nor shall any of the payments hereunder be assigned, without the prior written consent of WINTER JOHNSON. Any assignment without such prior written consent shall vest no rights in the assignee against WINTER JOHNSON. Subcontractor shall incorporate all provisions of this Agreement which affect the rights of WINTER JOHNSON into any subcontracts and purchase order agreements it proposes to execute with any other party. Subcontractor shall remain liable to WINTER JOHNSON for all acts and omissions of its subcontractors, suppliers and assigns.

### 3. SUBCONTRACT PRICE

3.1 Subcontract Price. WINTER JOHNSON agrees to pay Subcontractor for the satisfactory performance of Subcontractor's Work the amount set forth above as the Subcontract Price, subject to additions and deductions as

herein provided.

3.2 Unit Prices. If the Work (or a portion of the Work) is performed on a unit price basis, the Subcontract Price shall be computed in accordance with the unit prices set forth in **EXHIBIT B**.

3.3 Costs Included. The Subcontract Price includes all costs of Subcontractor's performance of the Work, including, by way of example and not limitation, the costs of labor, supervision, services, materials, equipment, tools, scaffolds, transportation, storage, incidentals, insurance, taxes, jobsite overhead, home office overhead and profit.

### 4. SUBCONTRACT PAYMENT

4.1 Schedule of Values. No later than seven (7) days prior to the first application for progress payment hereunder but, in any event no later than seven (7) days from the Effective Date, whichever is earlier, Subcontractor shall submit to WINTER JOHNSON in such detail and with sufficient supporting information as WINTER JOHNSON may require, a detailed Schedule of Values. The cost breakdown shall include line items for overhead and profit, As-Built Drawings, Operation & Maintenance data, Owner training, and Punch list work. The Schedule of Values is subject to WINTER JOHNSON's review and approval, but Subcontractor shall remain fully responsible for the reasonableness and accuracy of the costs contained in the agreed upon Schedule of Values, which will be used as a basis of checking Subcontractor's applications for payment or supporting WINTER JOHNSON's applications for payment under the Prime Contract. Subcontractor's submission of a Schedule of Values in a form reasonably acceptable to WINTER JOHNSON shall be a condition precedent to any payment to Subcontractor.

4.2 Payment Applications. On or before each Monthly Billing Date, Subcontractor shall submit to WINTER JOHNSON a progress payment application showing the value of the Work installed to date ("Completed Work"). The payment application shall be in the form attached hereto as **EXHIBIT D**, and shall be supported by such data as WINTER JOHNSON, the Owner or the Architect may reasonably require. Applications for payment received after the Monthly Billing Date will be considered as applications for the following month.

4.2.1 Stored Materials. If permitted by the Prime Contract or otherwise approved in advance by the Owner, progress payment applications may include requisitions for materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at some other location agreed upon in writing ("Stored Work"). Unless otherwise agreed in writing between WINTER JOHNSON and Subcontractor, Subcontractor shall pay all costs associated with offsite storage, including insurance and costs incurred by WINTER JOHNSON and Owner in making reasonable inspections.



4.3 Progress Payments. Subject to Subsections 4.3.1 thru 4.3.9 below, WINTER JOHNSON shall, within seven (7) days after receiving a progress payment from the Owner, make payment to Subcontractor in an amount equal to the value of the approved Completed Work and Stored Work as of the corresponding Monthly Billing Date, after deducting (a) all previous payments, (b) current retainage, (c) all charges or backcharges for services, materials, equipment and other items furnished or otherwise chargeable to Subcontractor, and (d) costs associated with liens filed against the Project.

4.3.1 Proof of Insurance Condition of Payment. As a condition precedent to payment, Subcontractor shall furnish evidence that insurance as required by the insurance requirements contained in **EXHIBIT J** is currently in effect.

4.3.2 Receipt of Bond. As a condition precedent to payment, Subcontractor shall furnish performance and payment bonds as required by this Subcontract.

4.3.3 Subcontractor Default Insurance. If performance and payment bonds are not required by this Subcontract, as a condition precedent to payment, Subcontractor shall furnish all information required for enrollment in WINTER JOHNSON's Subcontractor Default Insurance program, and Subcontractor shall furnish all documents relating to same as required by WINTER JOHNSON.

4.3.4 Immigration and Security Affidavit. As a condition precedent to payment, Subcontractor shall provide WINTER JOHNSON with a completed and signed Immigration and Security Affidavit in the form attached hereto as **EXHIBIT I**.

4.3.5 Lien Waivers. As a condition precedent for each progress payment, Subcontractor shall submit to WINTER JOHNSON statutory lien waivers in the form attached hereto as **EXHIBIT E**, waivers of bond claims, and/or affidavits executed by Subcontractor, its subcontractors, suppliers, and any other person used by Subcontractor in the performance of the Work, swearing that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items furnished or incurred in connection with the completed Work.

4.3.6 Record Documents. As a condition precedent to each progress payment, WINTER JOHNSON may require that Subcontractor make available to WINTER JOHNSON its current set of Record Documents.

4.3.7 Retainage. Unless prohibited by law, Subcontractor and WINTER JOHNSON agree that the Retained Percentage shall be deducted from Subcontractor's progress payment.

4.3.8 Prompt Pay Acts. To the extent the provisions of any prompt payment act(s) at the federal, state or local level, including without limitation O.C.G.A. § 13-11-1, et seq., entitled the "Georgia Prompt Pay Act,"

would otherwise apply to this Subcontract, the specific terms of this Subcontract supersede such statutory provisions. **Per the prime contract WINTER JOHNSON and the owner shall not be liable for any late payment interest or penalty.**

4.3.9 Payment by Owner. Subcontractor acknowledges that Subcontractor's Work is a portion of the work for the Project, and that payment for Subcontractor's Work by WINTER JOHNSON is conditioned upon payment for Subcontractor's Work by Owner. Subcontractor warrants and represents that it relies for payment of Subcontractor's Work on the credit and ability to pay of Owner, and not of WINTER JOHNSON, and that Subcontractor undertakes the risk that it shall not be paid for Subcontractor's Work in the event WINTER JOHNSON is not paid by Owner for such Work. Except for confidential information, Subcontractor may review any information provided by Owner to WINTER JOHNSON relative to Owner's financial ability to pay for the Work. Payment by the Owner to WINTER JOHNSON shall be an absolute condition precedent to WINTER JOHNSON's (or its surety's) obligation to make any progress payments, final payment or release of retainage to Subcontractor. This subparagraph shall not void any right of Subcontractor to file and take necessary legal action to preserve a claim of lien or claim against a bond.

4.4 Final Payment. Final Payment, consisting of the final progress payment and any unpaid balance of the Subcontract Price, shall be made within forty-five (45) days after the last of the following conditions precedent has occurred: (a) completion of the Work by Subcontractor; (b) acceptance of the Work by the Owner, WINTER JOHNSON and any other person or entity whose acceptance is required under the Contract Documents; (c) delivery of all warranties, manuals, record documents, as-built drawings, spares, attic stock and other similar closeout items required of Subcontractor or its privies by the Contract Documents; (d) delivery of lien waivers, waivers of bond claims and/or affidavits as required by the Contract Documents; (e) WINTER JOHNSON's receipt of final payment from the Owner; (f) WINTER JOHNSON's receipt of the required form of final waiver and affidavit attached hereto as **EXHIBIT F**; and (g) WINTER JOHNSON's receipt of the required form of sales tax payment affidavit attached hereto as **EXHIBIT L**.

4.4.1 Subcontractor's Waiver of Unidentified Claims. Subcontractor's acceptance of final payment shall constitute a waiver by Subcontractor of all of its Claims relating to the Work or arising out of the Subcontract Documents which were not asserted in writing by Subcontractor pursuant to Article 14 prior to Subcontractor delivering its final payment application to WINTER JOHNSON.

4.5 Sub-Subcontractors, Laborers and Suppliers. WINTER JOHNSON shall have the right, but not the



obligation, to contact Subcontractor's subcontractors, laborers and suppliers directly in order to verify that they are being paid by Subcontractor for labor, services or materials furnished to the Project. Subcontractor will, if requested by WINTER JOHNSON, promptly provide contact information for its subcontractors, laborers and suppliers.

4.5.1 No payment received by Subcontractor pursuant to this Agreement shall be used to satisfy or secure any other indebtedness owed by Subcontractor. Subcontractor shall not assign any monies due under this Agreement without the written consent of WINTER JOHNSON. All payments made by WINTER JOHNSON to Subcontractor under this Subcontract for labor, materials, or equipment furnished to the Project by any lower-tier Subcontractor, supplier, or other person ("payees") at the request of or pursuant to an agreement with Subcontractor shall, to the extent of the sums owing to any payees on account of such labor or materials, be held in trust by Subcontractor for the sole and exclusive benefit of such payees pending payment by Subcontractor to such payees, and shall not be commingled with any other funds of Subcontractor, and shall be paid over to such payees timely in accordance with this Agreement.

4.5.2 Subcontractor Payment Failure. If WINTER JOHNSON believes that payment obligations incurred by Subcontractor for the Work are not being satisfied, WINTER JOHNSON may give Subcontractor notice thereof. If Subcontractor contends that such payment obligations are invalid, Subcontractor shall notify WINTER JOHNSON in writing within five (5) business days of WINTER JOHNSON's notice; otherwise, such payment obligation will be deemed valid. WINTER JOHNSON may thereafter take any steps deemed necessary to assure that payments made under this Agreement are used to satisfy such obligations, including but not limited to paying such obligations directly, bonding off or otherwise discharging claims of liens arising therefrom, and retaining out of any payments due or to become due to Subcontractor (under this Agreement or otherwise) a reasonable amount to protect WINTER JOHNSON and Owner from any resulting loss, damage or expense.

4.5.3 Should WINTER JOHNSON in its discretion determine that Joint Check payments are to be made, Subcontractor agrees to execute WINTER JOHNSON's Joint Check Agreement (Exhibit P) as a condition precedent to any payment being released.

4.6 Right to Withhold Payment. WINTER JOHNSON reserves the right to withhold, without limiting other rights and remedies, an amount reasonably sufficient: (a) to defend and discharge any asserted claim that Subcontractor or its privies have failed to make payment for labor, services, materials, equipment, taxes, or other items furnished or prepared in connection with the Work;

(b) to defend and discharge any asserted claim that Subcontractor or its privies have caused damage to any other work on the Project; (c) to remedy any defective work, lack of performance, delays or any other default by Subcontractor or its privies under this Subcontract; or (d) to remedy a default by Subcontractor under any other Subcontract, Purchase Contract, or Purchase Order between WINTER JOHNSON (or any joint venture of which WINTER JOHNSON is a party) and Subcontractor on this or any other project, including other projects where WINTER JOHNSON is part of a joint venture.

4.7 WINTER JOHNSON's payment to Subcontractor shall not waive any Claim at any time by WINTER JOHNSON that the Work performed by Subcontractor is defective or fails to comply with the requirements of the Contract Documents.

## 5. TIME

5.1 Time of the Essence. Time is of the essence of this Subcontract.

5.2 Commencement of Work. The date of commencement of the Subcontractor's Work shall be the date of this Subcontract unless provision is made for the date to be fixed in a written notice to proceed by WINTER JOHNSON.

5.3 Subcontract Schedule. Subcontractor shall perform the Work at such times and in such manner as necessary to maintain the schedule requirements of the Contract Documents, including the Subcontract Schedule attached hereto (or as later incorporated herein by Change Order) as **EXHIBIT B**.

5.3.1 WINTER JOHNSON shall have the right to determine the time, order and priority in which the various parts of the Work shall be performed. Subcontractor shall prosecute Subcontractor's Work expeditiously and at such times and in such order as WINTER JOHNSON shall direct to keep it sufficiently in advance of the other parts of the Work and to avoid any delay or disruption to the overall progress or completion of the Work.

5.3.2 Subcontractor acknowledges and agrees that the Subcontract Schedule set forth in **EXHIBIT B** is subject to change, including re-sequencing, as may be reasonably necessary to avoid or minimize overall project delays and comply with the overall Project schedule.

5.3.3 WINTER JOHNSON shall control the use of any float time in the Subcontract Schedule as well as in the overall Project schedule.

5.4 Work Progress and Coordination. It is Subcontractor's responsibility to be aware of and perform its Work in accordance with the most current Subcontract Schedule as well as the overall Project Schedule.

5.5 Project Delays Generally. If progress of the overall Project or the Work is delayed, Subcontractor agrees that





WINTER JOHNSON may order the Subcontractor to take steps reasonably necessary to maintain the then current overall Project Schedule and/or Subcontract Schedule, including, but not limited to, supplying additional labor and working overtime.

5.5.1 Overtime shall be ordered in writing by WINTER JOHNSON.

5.5.2 When overtime is ordered, Subcontractor shall itemize overtime labor on Exhibit O Extra Work / Time & Material Form. Subcontractor shall have overtime labor verified the day it is performed and obtain signature of WINTER JOHNSON Superintendent and WINTER JOHNSON Project Manager.

5.5.3 Subject to Section 5.7 below, if Subcontractor is ordered to work overtime, the Subcontract Price shall be increased by (a) the actual direct costs incurred by Subcontractor over and above the straight time rates and (b) the taxes and insurance applicable to such additional wages. Subcontractor shall not be entitled to overhead and profit on the additional wages.

5.5.4 WINTER JOHNSON may procure or supplement additional labor without terminating this Subcontract if the Subcontractor fails within twenty-four (24) hours to comply with a written order to supply additional labor or to work overtime.

5.6 Delays and Damages Caused by Subcontractor. It is the responsibility of Subcontractor to perform and coordinate its Work with all other contractors, subcontractors and suppliers so as to maintain the Subcontract Schedule and not to delay, interfere or damage the work of other contractors, subcontractors and suppliers. If Subcontractor should fail to fulfill this obligation, Subcontractor shall be liable for all damages incurred by WINTER JOHNSON, the Owner or such other contractors, subcontractors or suppliers as a direct consequence of such failure, including, but not limited to, extended general conditions costs, unabsorbed home office overhead expenses, added costs for overtime work, and attorneys' fees and expenses incurred, plus an allowance for administrative burden equal to fifteen percent (15%) of such costs which the parties agree is a reasonable estimate of the administrative burden which WINTER JOHNSON will incur and is not assessed as a penalty.

5.6.1 Subcontractor agrees WINTER JOHNSON may, in addition to the remedies set forth elsewhere in this Subcontract, pay for materials ready for delivery to the Subcontractor, insuring the same for the benefit of all parties concerned, and charging all costs in connection with such payment and insurance against the amount to be paid Subcontractor under this Subcontract.

5.6.2 If the Prime Contract provides for liquidated or other damages for delay, Subcontractor shall be liable to WINTER JOHNSON for all liquidated or other damages assessed by Owner against WINTER

JOHNSON in proportion to Subcontractor's share of responsibility for such delay damages.

5.7 Delays Beyond Subcontractor's Control. If Subcontractor is delayed in the prosecution of the Work due to events beyond Subcontractor's control, Subcontractor shall be entitled only to such additional compensation and extensions of time to which WINTER JOHNSON is entitled under the Prime Contract; provided, however, that if Subcontractor's delay in the performance of Subcontractor's Work is caused by WINTER JOHNSON, WINTER JOHNSON shall be liable to Subcontractor for reasonable costs and damages incurred by Subcontractor in proportion to WINTER JOHNSON's share of responsibility for the delay.

5.8 Notwithstanding anything to the contrary in the Contract Documents, including this Article, Subcontractor shall not be entitled to an extension of time or additional compensation for any delay by whomever caused unless a written notice of delay is delivered by Subcontractor to WINTER JOHNSON within seventy-two (72) hours after commencement of the event giving rise to the delay or within such shorter period of time as will permit WINTER JOHNSON to comply with applicable notice provisions contained in the Prime Contract. Any such notice shall contain: (a) a description of the event of delay; (b) the date on which the delay commenced; (c) a description of the cause of the delay; (d) a description of any critical activities likely to be impacted by the delay; (e) an estimate of the anticipated duration of the delay; and (f) any other information required by applicable notice provisions in the Prime Contract.

5.9 Nothing herein shall be construed to prohibit WINTER JOHNSON's right to procure or supplement additional labor without terminating this Subcontract if Subcontractor fails within twenty-four (24) hours of a written order to correct a breach of this Subcontract.

## 6. GENERAL PROVISIONS GOVERNING THE WORK

6.1 Quality of Materials. Unless specifically permitted by the Contract Documents or authorized in advance by WINTER JOHNSON in writing, all materials used in the Subcontractor's Work shall be new and of good quality.

6.2 Subcontractor shall be responsible for any and all loss or damage resulting from Subcontractor's failure to notify WINTER JOHNSON, prior to installation, of any shortage, damage or defect in materials and equipment furnished by others.

6.3 Supervision. Subcontractor is responsible for providing full-time, competent supervision on site at all times while Subcontractor is performing Work. **Subcontractor shall provide a named Superintendent and qualified employee for scheduling direction for its work. The supervisory employees must have been employed in a supervisory capacity of substantially equivalent level on a similar project for at least two years within the last five years. A resume of**



experience for each named employee shall be provided prior to the commencement of work.

**SUPERINTENDENT:**

**[Enter name, address and contact info including email]**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Cell Number:** \_\_\_\_\_

The Subcontractor's designated supervisor shall have the authority to make decisions on Subcontractor's behalf. If requested by WINTER JOHNSON, Subcontractor will replace its supervisor within twenty-four (24) hours.

6.4 Permits, Fees, Licenses and Taxes. Subcontractor shall give required notices to any governmental authorities and shall secure and pay for all applicable permits, fees, tests, licenses, assessments, inspections, and taxes related to Subcontractor's Work.

6.5 Duty to Review Contract Documents and Field Conditions. Before commencing each portion of the Work, Subcontractor shall carefully study and compare the various drawings, Contract Documents and existing and field conditions pertaining to that portion of the Work. If Subcontractor discovers or should have discovered any errors, omissions, or inconsistencies or non-compliant work, Subcontractor must promptly report such errors, omissions, or inconsistencies to WINTER JOHNSON in writing or waive its right to assert Claims or defenses relating to same.

6.6 Temporary Site Facilities and Equipment. Except for those listed in **EXHIBIT B** hereto, all temporary site facilities and equipment (e.g., storage sheds, water, heat, light, task lighting, power, extension cords, toilets, cranes, hoists, elevators, scaffolding, cold weather protection, ventilating pumps, watchman service, barricades, traffic control, flagmen, signage, street closure permits and traffic protection) required in performing the Work shall be furnished by Subcontractor.

6.7 Subcontractor shall not use WINTER JOHNSON's labor, and shall not use or operate WINTER JOHNSON's machinery, equipment, tools, scaffolding, hoists, lifts or similar items ("equipment") owned, leased, or under the control of WINTER JOHNSON without the express permission of WINTER JOHNSON. If such use is permitted by WINTER JOHNSON, Subcontractor shall assume all risks in connection therewith, including the risk of defects in said equipment.

6.8 Protection of Work and Materials. Subcontractor shall be responsible for protecting and insuring the Work, until the Work has been installed and accepted by Owner.

Except to the extent of any proceeds received for the benefit of Subcontractor under a policy of builders' risk or fire insurance, Subcontractor shall be solely responsible for any loss or damage to the Work, and for the correction or restoration of any such loss or damage to the Work or to the work of other subcontractors, resulting from the operations of Subcontractor or its privies.

6.9 Coordination with Others. Subcontractor shall coordinate the installation of Subcontractor's Work with all other contractors and subcontractors performing Work on the Project.

**7. PROTECTION OF PERSONS AND PROPERTY**

7.1 Safety Measures. Subcontractor shall implement safety and health measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction as well as those established and implemented by WINTER JOHNSON and the Owner. Subcontractor shall strictly adhere to all applicable OSHA requirements and any other safety requirements imposed by the Contract Documents. Subcontractor shall stop any part of the Work which is deemed unsafe by WINTER JOHNSON, the Owner or governmental authorities until corrective measures have been taken. The failure of the Owner or WINTER JOHNSON to stop Subcontractor's unsafe practices shall not relieve Subcontractor of its responsibility therefore. Subcontractor shall be responsible for any costs, fines or penalties assessed against Owner or WINTER JOHNSON for the Subcontractor's failure to comply with Applicable Laws and regulations concerning safety and health.

7.1.1 Safety Plan. Subcontractor shall furnish to WINTER JOHNSON prior to commencing work, a written, detailed, project and scope specific Safety Plan. The Safety Plan shall address all aspects of Subcontractor's Work and include methods of protection of the workforce from hazards related to Subcontractor's Work. The failure of WINTER JOHNSON to verify the Subcontractor's safety plan shall not relieve Subcontractor of its responsibility and liability therefor.

7.1.2 Fall Protection. 100% fall protection for any worker over six (6) feet above any floor or grade condition, including personnel utilizing scaffold or lifts is required. Monitoring is not an acceptable means of fall protection and will not be allowed.

7.1.3 Safety Partner. Subcontractor will participate fully in WINTER JOHNSON's "Safety Partner" program. Subcontractor shall have required documentation completed prior to commencing work. Subcontractor understands that no worker will be permitted to work on the Project without a Safety Partner hardhat decal.

7.2 Hazardous Materials. Subcontractor warrants and agrees that it will comply with any and all Applicable Laws, regulations and standards governing the handling and



use of hazardous materials, including, but not limited to, all federal and state hazardous communications standards, and that it shall at all times during the Work comply with said laws and standards.

7.2.1 Subcontractor specifically agrees that it will comply with the OSHA Hazard Communication Standard by, among other things, providing WINTER JOHNSON with Safety Data Sheets (SDS) for any materials requiring Safety Data Sheets prior to using said materials on the Project site.

7.2.2 Subcontractor further agrees that it will immediately notify WINTER JOHNSON in writing should it encounter materials suspected of containing asbestos, lead or other hazardous materials.

7.3 Reports of Accident and Personal Injury. Subcontractor shall notify WINTER JOHNSON, in writing, of the facts and details of every accident and personal injury including the name of any injured worker(s) and the nature of the injury or injuries, and provide WINTER JOHNSON copies of accident reports furnished to Subcontractor's insurance carrier. In cases involving death of any worker or the in-patient hospitalization of any worker, from or as a result of a work-related incident, Subcontractor shall orally report such incidents to WINTER JOHNSON as soon as possible, but in no circumstances later than eight (8) hours after such incident.

7.4 WINTER JOHNSON shall not be liable or responsible for loss or damage to the equipment, tools, facilities or other personal property owned, rented or used by Subcontractor, or anyone employed by Subcontractor, in the performance of the Work; and Subcontractor shall maintain such insurance and take such protective action as it deems desirable with respect to such property.

## 8. UNCOVERING AND CORRECTION OF WORK

8.1 Subcontractor shall provide WINTER JOHNSON, the Architect, and the Owner reasonable opportunity to inspect the Work throughout the course of the Project.

8.2 Subcontractor shall, within forty-eight (48) hours after receiving written notice from WINTER JOHNSON or any governmental entity, remove all portions of the Work which any entity deems unsafe, defective, or in any way failing to conform to the Contract Documents or applicable building codes, and shall replace the same with proper and conforming Work, making good all other work damaged thereby.

8.3. Failure of WINTER JOHNSON or the Owner to discover and notify Subcontractor of defective or nonconforming Work at the time the Work, or any portion thereof, is installed shall not relieve Subcontractor of responsibility for replacement of the defective or nonconforming Work or any resulting damages.

8.4 At their sole option, Owner or WINTER JOHNSON may elect to accept defective or nonconforming Work instead of requiring its removal and correction, in which

case a Change Order will be issued to reflect a reduction in the Subcontract Price that is commensurate with the diminished value of the Work.

## 9. CHANGES IN THE WORK

9.1 Changes in the Subcontract Documents may be accomplished in writing by Change Order, Change Directive, or a Field Order. A Change Order shall be based upon agreement between WINTER JOHNSON and Subcontractor. A Change Directive or Field Order does not require agreement by Subcontractor.

9.1.1 In the event of a change in the Work, the Subcontract Price shall be adjusted by the net amount of any direct savings and direct costs attributable to the change, if any, plus the Overhead and Profit Percentage, and the time for performance of the Work shall be adjusted as provided in the Contract Documents. As used in this Subcontract, Subcontractor's direct savings and direct costs shall be limited to the actual amount of the following: cost of materials (including sales tax and cost of delivery); cost of labor, taxes, insurance; bond premiums; and actual rent of equipment and machinery. Where the Work affected by the change is the subject of unit prices, the adjustment to the Subcontract Price shall be limited to the unit prices specified in **EXHIBIT B. Subcontractor shall incorporate these limitations on recoverable costs for change order work into its sub-subcontracts.**

9.2 Change Proposals. A change in the Work may be identified by WINTER JOHNSON in a document entitled "Item of Change" (IOC). Subcontractor must respond to any IOC from WINTER JOHNSON with a written proposal as soon as is practicable, but in no event later than five (5) working days after receipt of the IOC. Subcontractor's proposal must be fully itemized and substantiated, including (1) all materials by quantity and price, (2) all labor by unit prices, (3) insurance, (4) permits, (5) payroll taxes and insurance, (6) labor fringe benefits and equipment by quantity and rate, and (7) justification for any time extensions requested. If the parties reach agreement regarding price and time adjustments, a Change Order will be issued pursuant to Section 9.3 below. Otherwise, WINTER JOHNSON may issue a change directive pursuant to Section 9.4 below.

9.3 Change Order. A Change Order is a written instrument signed by WINTER JOHNSON and Subcontractor stating their agreement upon: (a) the change in the Work; (b) the amount of the adjustment, if any, in the Subcontract Price; and (c) the extent of the adjustment, if any, to the Subcontract Schedule.

9.3.1 The Subcontractor's Overhead and Profit Percentage applied to the direct costs of the changes in the Work shall be Subcontractor's sole and complete compensation for all indirect costs, including by way of illustration and not limitation, home office overhead, profit, supervision, extended





performance costs, administrative expenses, and field overhead.

9.4 Change Directive. A Change Directive is a written order from WINTER JOHNSON directing a change in Subcontractor's Work and, as applicable, stating an adjustment in the Subcontract Price and/or Subcontractor Schedule.

9.4.1 If a Change Directive provides for an adjustment of the Subcontract Price, the adjustment shall be as provided in Subsection 9.1.1 above.

9.4.2 Upon receipt of a Change Directive, Subcontractor shall proceed promptly with the changed Work and advise WINTER JOHNSON of Subcontractor's agreement or disagreement with the price or time adjustments contained therein.

9.4.3 If Subcontractor disagrees with the price and/or time adjustments set forth in the Change Directive, Subcontractor may assert a Claim pursuant to Article 14 below. Amounts not in dispute for such changes in the Work shall be incorporated into a Change Order.

9.4.4 WINTER JOHNSON may issue a Change Directive for Subcontractor to proceed with changed Work on a unit price or "time and material" basis if expressly stated in the Directive. Unit prices, material costs and labor rates shall be established by the parties prior to performance of the changed Work.

9.5 Field Order. WINTER JOHNSON may order minor changes not involving adjustment in the Subcontract Price or extension of the Subcontractor Schedule and not inconsistent with the intent of the Contract Documents. Subcontractor shall carry out such written orders promptly, subject to its right to assert a Claim in accordance with Article 14 below.

9.6 Written Order Required. In no event, shall Subcontractor proceed with changed or extra work without a fully executed Change Order or a written Change Directive from WINTER JOHNSON. WINTER JOHNSON shall not be liable for any additional costs incurred or delays encountered in the performance of such work without such prior written order.

9.7 For work performed on a time and material basis, Subcontractor shall itemize work on Exhibit O Extra Work / Time & Material Form. Subcontractor shall have work verified the day it is performed and obtain signature of WINTER JOHNSON Superintendent and WINTER JOHNSON Project Manager.

## 10. BONDS OR SUBCONTRACTOR DEFAULT INSURANCE

10.1 Performance and Payment Bonds. If so indicated on the first page of this Subcontract, Subcontractor shall, within seven (7) days after executing this Subcontract and prior to commencing the Work, furnish, at its expense, a performance bond and a payment bond, with WINTER

JOHNSON named as obligee, on separate bond forms, per the forms attached hereto in **EXHIBITS G & H**, each in an amount equal to the Subcontract Price, from a surety or sureties reasonably acceptable to WINTER JOHNSON.

10.1.1 Receipt and approval by WINTER JOHNSON of a performance bond and payment bond as required by this Subcontract shall be an express and absolute condition precedent to any payment by WINTER JOHNSON to Subcontractor.

10.1.2 If Subcontractor fails to furnish WINTER JOHNSON with payment and performance bonds meeting the requirements of this Article within seven (7) days after this Subcontract is fully executed by Subcontractor and delivered to WINTER JOHNSON, WINTER JOHNSON may terminate this Subcontract at no cost to WINTER JOHNSON and re-let the Work to another Subcontractor.

10.2 Subcontractor Default Insurance. WINTER JOHNSON shall have the option of securing Subcontractor Default Insurance. The Subcontract Default Insurance shall be for the exclusive benefit of WINTER JOHNSON.

10.2.1 The Subcontractor shall fully cooperate with WINTER JOHNSON's standard procedures for pre-qualifying subcontractors for its Subcontractor Default Insurance.

10.2.2 In the event that Subcontractor fails to promptly cooperate with WINTER JOHNSON's standard pre-qualification procedures or shall fail to meet the minimum qualifications of WINTER JOHNSON's Subcontract Default Insurance, WINTER JOHNSON may: (a) terminate this Subcontract at no cost to WINTER JOHNSON and re-let the Work to another Subcontractor; or (b) exercise its option to require Subcontractor to furnish payment and performance bonds pursuant to this Article, or (c) withhold payment from Subcontractor until the pre-qualification procedures have been met or payment and performance bonds have been furnished.

10.2.3 WINTER JOHNSON shall have the right to subrogate its rights under this Subcontract to WINTER JOHNSON's Subcontract Default Insurance underwriter.

## 11. INSURANCE

11.1 Before commencing the Work, Subcontractor shall obtain, at its expense, at least the insurance coverage specified in **EXHIBIT J** attached hereto, all in form and substance reasonably acceptable to WINTER JOHNSON, from insurers that are duly authorized to transact business in the state in which the Project is located, and that are otherwise reasonably acceptable to WINTER JOHNSON. Subcontractor shall provide proof of acceptable insurance prior to commencement of work. **(NOTE: CGL Additional Insured endorsements must state that completed operations are covered.)**





11.2 Subcontractor shall maintain all insurance required by the Subcontract Documents, without interruption, until the warranty period under Article 20 below has lapsed, except for products and completed operations coverage, which Subcontractor shall maintain for a minimum of three (3) years following final completion of Subcontractor's Work.

11.3 Policies shall be endorsed to provide that the carrier waives its right of subrogation for General Liability, Automobile Liability, Workers Compensation and Umbrella/Excess Liability (if applicable) against WINTER JOHNSON. A copy of the endorsements shall be attached to Subcontractors certificate of insurance.

11.4 All policies except the worker's compensation insurance policy are to name WINTER JOHNSON, the Owner and Architect as additional insured. The Commercial General Liability (CGL) policy endorsements shall be either CG2010 (11/85) or CG2010 (04/13) and CG2037 (04/13) or carrier's equivalent specifically including Products/Completed Operations coverage for the Additional Insureds. The Umbrella/Excess Liability shall "follow form" over the coverage afforded in the Auto Liability and CGL policy in this regard. The Additional Insured coverage extended to WINTER JOHNSON shall apply on a "primary" and non-contributory basis. The CGL policy General Aggregate limit shall apply on a "Per Project" basis.

11.5 Subcontractor shall be exclusively responsible for any and all deductibles as it may pertain to insurance coverage on the Project, for claims related to or in any way connected with Subcontractor's Work. This responsibility includes but is not limited to: all deductible and/or self-insured retention (SIR) expenses incurred by WINTER JOHNSON as an Additional Insured under any and all Liability insurance provided by Subcontractor, or assessed against WINTER JOHNSON by the owner as a result of negligent acts or willful omissions of Subcontractor, its sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable; and all deductible expenses for builder's risk or other property insurance claims covering Subcontractor's Work.

11.6 The CGL policy may not contain exclusions pertaining to any form of residential or habitable construction. If any such exclusionary wording is present, an endorsement must be issued to the policy and provided to WINTER JOHNSON within thirty (30) days of the Work commencing, which confirms the exclusion(s) are deleted or do not apply specifically to the coverage afforded for this specific project. Any such endorsement will include project name, location and contract number. Prior to the Work commencing Subcontractor must present written confirmation from insurer or agent/broker that any exclusions related to residential or habitational projects have been modified so as not to apply to coverage for this project and the required

endorsements will be effected prior to work commencing and endorsed to said policy as required. This requirement pertains to Commercial General Liability and Umbrella policies only.

11.7 All insurance required by this Subcontract shall (1) be primary and not in addition to, or contributing with, any other insurance carried by, or for the benefit of Additional Insureds (except Workers Compensation & Employers Liability); (2) waive any and all right of subrogation against WINTER JOHNSON and other Additional Insureds; and (3) contain a cross liability/severability of interest endorsement (except Workers Compensation & Employers Liability)

11.8 All endorsements documenting compliance with these insurance requirements will be attached to Subcontractors certificate of insurance.

11.9 Subcontractor shall not use any leased labor or obtain any labor or employees through any form of labor leasing or Professional Employer Organization without WINTER JOHNSON's prior written approval. Subcontractor shall not allow any employee or worker (whether Subcontractor's employee or leased employee) to work at the Project site who is not covered by Workers Compensation insurance.

## **12. INDEMNITY AND DEFENSE**

12.1 Generally. To the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless, Owner, Architect, WINTER JOHNSON and all of their respective affiliates, parents, subsidiaries, officers, directors, employees, successors and assigns (all of which are hereinafter collectively referred to as "Indemnitees" and singularly referred to as "Indemnitee"), from and against all claims, damages, losses, costs and expenses, including, but not limited to, attorneys' and expert consultant fees, arising out of or resulting from the performance of Subcontractor's Work, provided that any such claim, damage, loss, cost or expense, including attorneys' and expert consultant fees: (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than direct damage to Subcontractor's Work itself), including the loss of use resulting therefrom, and is caused or alleged to be caused in whole or in any part by any act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable, regardless of whether it is also caused in part by a party indemnified hereunder; or (2) arises out of or related to Subcontractor's performance under this Subcontract, or results from any claimed failure of Subcontractor to properly fulfill its obligations under this Subcontract. This indemnity obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist under law except to the extent that it is caused by the sole negligence of any Indemnitee, in



which case this obligation shall not apply relative to such Indemnitee.

12.2 Lien and Bond Claims. Subcontractor shall defend, indemnify and hold harmless WINTER JOHNSON, WINTER JOHNSON's sureties and the Owner from any lien or claim of lien or any claim on any payment or performance bond filed or maintained by any laborer, materialman or other person or entity directly or indirectly acting for, through, or under Subcontractor, against the Project or any part thereof or any interest therein or against any monies due or to become due from Owner to WINTER JOHNSON or from WINTER JOHNSON to Subcontractor.

12.2.1 Without limiting the foregoing, Subcontractor shall cause any such lien or claim to be satisfied, removed or discharged by bond, payment or otherwise within ten (10) days from the date of filing or receipt of notice of the lien or claim, whichever is earlier.

12.2.2 If Subcontractor does not discharge a lien or claim on a payment or performance bond within the required time, WINTER JOHNSON may, at its sole option, discharge such lien or bond claim without legal determination of its validity, and deduct the cost of discharging the lien or claim, including all reasonable attorneys' fees and expenses incurred from any money then due or thereafter to become due to Subcontractor under this Subcontract, plus an allowance for administrative burden equal to fifteen percent (15%) of such costs which the parties agree is a reasonable estimate of the administrative burden which WINTER JOHNSON will incur and is not assessed as a penalty.

12.3 Patents. Subcontractor shall defend, indemnify and hold harmless WINTER JOHNSON, the Owner, the Architect and their respective privies, from and against any claim, cost, expense or liability (including attorneys' fees and expenses) arising out of or resulting from infringement or alleged infringement by Subcontractor of any patent rights, copyrights, or other similar rights attributable to the Work, except to the extent that the Owner may have expressly assumed responsibility therefore under the Contract Documents.

12.4 Legal Proceedings. Should Owner or any other person assert a claim or institute a suit, action, dispute or proceeding against WINTER JOHNSON involving the manner or sufficiency of Subcontractor's performance of the Work, Subcontractor and/or its sureties shall, upon written request of WINTER JOHNSON, promptly assume the defense of such claim, suit, action, dispute or proceeding at Subcontractor's and/or its sureties' expense, and Subcontractor and/or its sureties shall indemnify and hold harmless WINTER JOHNSON and its agents, servants, and employees from and against any liability, loss, damage, or expense arising out of or related to such claim, suit, action, dispute or proceeding.

12.5 No Limitations. Subcontractor's duty to defend, hold harmless, and indemnify shall not be limited in any way by insurance limits, any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or its privies under Worker's Compensation Acts, Disability Benefit Acts, or other employee benefit acts.

12.6 Enforceability. The parties hereto acknowledge and agree that, to the extent that any portion of the indemnification provisions contained in this Article are deemed unenforceable, then such portion is considered severable and will not affect the remaining portions of such provisions.

12.7 Consideration. Included in the Subcontract Price is the sum of ten dollars (\$10.00) as specific consideration of the indemnity obligations provided under this Article.

12.8 Survival. The requirements of this Article shall survive termination of this Subcontract.

### 13. INDIRECT AND CONSEQUENTIAL DAMAGES

13.1 Notwithstanding any provision of this Subcontract to the contrary, neither WINTER JOHNSON nor Subcontractor shall be liable to the other for indirect or consequential damages incurred by the other which arise from or relate to this Subcontract, the Work or the Project. Nothing herein shall be construed to limit Subcontractor's liability to WINTER JOHNSON for liquidated damages assessed by the Owner for which Subcontractor is responsible.

### 14. CLAIMS

14.1 A Claim is a demand or assertion made in writing by WINTER JOHNSON or Subcontractor regarding any matter in dispute between WINTER JOHNSON and Subcontractor. **Subcontractor's exclusive remedy for delays in performance of the contract by events beyond its control, including delays claimed to be caused by Owner or Design Professional or attributable to Owner or Design Professional, and including claims based on breach of contract or negligence, shall be an extension of time under its Subcontract Schedule. Subcontractor expressly agrees that an extension of time under the Subcontract Schedule constitutes its sole and exclusive remedy for delay. Claims by Subcontractor for increases in the subcontract price, damages, losses, or additional compensation are waived. Subcontractor shall incorporate the terms of this Paragraph 14.1 in all sub-subcontracts.**

14.2 Claims relating to the Owner. Subcontractor agrees to make all Claims against WINTER JOHNSON for which Owner is or may be liable in the same manner and within the time limits provided in the Contract Documents for like claims by WINTER JOHNSON against Owner. Notice of such Claims shall be given by Subcontractor to WINTER JOHNSON at the earlier of: (1) within such time as to enable WINTER JOHNSON to give Owner any Claim related notices required by the Contract Documents; (2)



within seventy-two (72) hours of the occurrence of the event for which such Claim is made; or (3) prior to performance of the affected portion of Subcontractor's Work (unless such Work relates to an emergency endangering life or property, in which case Subcontractor shall provide notice as soon as practicable under the circumstances); otherwise, the Claim shall be deemed waived. Subcontractor shall only be entitled to an adjustment to the Subcontract Price or Subcontract Schedule for performing and completing that portion of the Work associated with any Claim for which Owner is or may be liable, subject to Paragraph 4.3.9, and only to the extent actually granted to WINTER JOHNSON by **Owner and subject to the limitations of Paragraph 14.1**. Any decision of the Owner or Architect with respect to such Claims which, under the terms of the Contract Documents, is binding on WINTER JOHNSON, and any decision in arbitration or litigation between Owner and WINTER JOHNSON which becomes final and binding on WINTER JOHNSON shall likewise be final and binding on Subcontractor.

14.3 Claims relating to WINTER JOHNSON. Notice of any Claim not covered by Section 14.2, shall be given by Subcontractor to WINTER JOHNSON at the earlier of: (1) within seventy-two (72) hours after the occurrence of the event for which such Claim is made; or (2) prior to performance of the affected portion of Subcontractor's Work (unless such Work relates to an emergency endangering life or property, in which case Subcontractor shall provide notice as soon as practicable under the circumstances); otherwise, such Claim shall be deemed waived.

14.4 Notice of Claim. Notice of Claim shall be deemed given if delivered in any one of the following ways: (a) certified or registered mail, with return receipt requested; or (b) overnight delivery via the United States Postal Service, Federal Express, UPS or equivalent, with written confirmation of delivery.

## 15. DISPUTE RESOLUTION

15.1 Condition Precedent to Legal Action or Arbitration Proceeding. Compliance with the dispute resolution procedures contained in this Article and in the Prime Contract shall be a condition precedent to the right of Subcontractor to commence or continue any legal action or arbitration proceeding against WINTER JOHNSON.

15.2 WINTER JOHNSON-Subcontractor Disputes. All claims, disputes and other matters in question between the Subcontractor and WINTER JOHNSON arising out of or related to the Work or the Subcontract or any breach thereof, except those involving the correlative rights or duties of the Owner which are governed by Section 15.3 below, shall be decided, at the sole option of WINTER JOHNSON, by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect.

15.2.1 In the event that WINTER JOHNSON elects to arbitrate the dispute, the arbitration shall, at WINTER

JOHNSON's sole election, and to the extent allowed by law, take place in (a) Atlanta, Fulton County, Georgia; or (b) the state where the Project is located.

15.2.2 In the event that WINTER JOHNSON elects not to arbitrate, to the extent allowed by law, any lawsuit shall be brought in a court of competent jurisdiction in Atlanta, Fulton County, Georgia, where both parties shall agree to submit to jurisdiction and venue.

15.2.3 Subcontractor warrants and represents that it has included in the Subcontract Price a sum of not less than ten dollars (\$10.00) as compensation and consideration for irrevocably offering the foregoing option and arbitration rights to WINTER JOHNSON.

15.2.4 If Subcontractor fails to comply with WINTER JOHNSON's notice of election within seven (7) days after receipt of written notice of said election, Subcontractor shall be liable to WINTER JOHNSON for all expenses incurred as a result of such failure, including, but not limited to, attorneys' fees incurred preparing and filing a responsive pleading, responding to discovery, and obtaining an order compelling compliance with WINTER JOHNSON's election.

15.3 Owner Disputes. Any controversy or claim between WINTER JOHNSON and Subcontractor arising out of or related to the Subcontractor's Work or the Contract Documents or any breach thereof which involves the correlative rights or duties of the Owner shall be settled according to the disputes resolution procedures in the Prime Contract. Subcontractor must furnish all notices and information within the time required under the Prime Contract to enable WINTER JOHNSON to timely assert a claim or a defense of Subcontractor or such claim or defense shall be waived.

15.3.1 For a dispute which involves Subcontractor's Work, Subcontractor shall have the obligation to participate in the assertion or defense of claims related to such Work and shall be bound by the outcome of the dispute resolution procedure regardless of whether it complies with its obligation to participate.

15.3.2 Payment by the Owner to WINTER JOHNSON is a condition precedent to the obligation of WINTER JOHNSON to pay Subcontractor for any Work, claim or damage involving the correlative rights and responsibilities of the Owner.

15.3.3 Unless otherwise determined by a court or arbitrator, WINTER JOHNSON shall pay Subcontractor the amount of the proportionate share of any recovery due Subcontractor on the basis of the ratio of the Subcontractor's claims to other claims asserted by WINTER JOHNSON less the litigation expenses and attorneys' fees incurred by WINTER JOHNSON pursuing Subcontractor's claims as calculated by WINTER JOHNSON.





15.3.4 Subcontractor shall indemnify WINTER JOHNSON for any and all costs, including attorneys' fees and expert consultant fees, for defending a claim by a third party that relates to or arises from the Subcontractor's Work.

15.4 Consolidation or Joinder. WINTER JOHNSON may join or consolidate a lawsuit or arbitration initiated hereunder with a lawsuit or arbitration between WINTER JOHNSON and the Owner, Architect, another Subcontractor, or any other party where said lawsuit or arbitration involves a common question of fact or law arising from or related to the Project. To the extent that Subcontractor is or may be liable for any Claims asserted by other subcontractors, suppliers, or third parties against WINTER JOHNSON in an arbitration proceeding or litigation, then, at the election of WINTER JOHNSON, Subcontractor hereby consents to joinder in such arbitration proceeding or litigation, and to the direct assertion of claims by such Subcontractor, supplier or third party against Subcontractor.

15.5 Obligation to Continue Performance. Unless otherwise agreed in writing by WINTER JOHNSON, Subcontractor shall continue to perform Subcontractor's Work and maintain the Subcontract Schedule during or pending any arbitration or litigation.

15.6 Arbitrability. The agreement to arbitrate set forth in this Article shall be specifically enforceable under Applicable Law in any court having jurisdiction thereof. Any dispute concerning questions of arbitrability, consolidation or joinder of proceedings shall be decided by the appropriate court and not by the arbitrator(s).

15.7 Arbitration Binding and Final. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with the Applicable Law in any court having jurisdiction thereof.

## 16. TERMINATION OF WORK BY OWNER

16.1 Should Owner suspend or terminate the Prime Contract, or any portion of said contract which includes all or part of Subcontractor's Work, WINTER JOHNSON shall so notify Subcontractor in writing. Upon receipt of said notice, Subcontractor's performance under this Subcontract, or affected portion thereof, shall also be suspended or terminated and Subcontractor shall immediately stop work on any affected portion of Subcontractor's Work. In the event of Owner suspension or termination, WINTER JOHNSON's liability to Subcontractor is limited to the extent of recovery by WINTER JOHNSON from Owner, on Subcontractor's behalf, for such suspension or termination. Subcontractor shall incorporate provisions similar to this Article within agreements with its subcontractors and suppliers. **Upon termination of the Prime Contract, WINTER JOHNSON will, at the election of the Owner, assign the Subcontractor to the Owner.**

## 17. TERMINATION FOR CONVENIENCE

17.1 Notwithstanding any other provision in the Subcontract Documents to the contrary, WINTER JOHNSON may, without cause, terminate the Subcontract at any time upon written notice to Subcontractor.

17.1.1 In the event WINTER JOHNSON gives Subcontractor written notice that the Subcontract is terminated for convenience, Subcontractor shall withdraw its employees and equipment from the worksite on the effective date of termination as specified in said notice.

17.1.2 Subcontractor shall receive, as its entire and sole compensation, its actual and reasonable necessary costs of performing the Work to the date of termination, as determined by an audit of Subcontractor's records, plus ten percent (10%), or other percentage as allowed by the Prime Contract in the event of Termination for Convenience by the Owner, as an agreed upon reasonable markup for overhead and profit, less prior payments made, but in no event shall such amounts paid and payable hereunder exceed the total Subcontract Price. In this regard, the Subcontractor shall make its records available at reasonable times and places for WINTER JOHNSON's audit.

17.1.3 Upon such termination for convenience, the parties hereto shall have no further obligation to each other except for Subcontractor's obligations to perform corrective and/or warranty work relating to Work actually performed by Subcontractor prior to termination, and to indemnify WINTER JOHNSON as provided for in this Subcontract.

17.2 Subcontractor shall incorporate provisions similar to this Article within agreements with its subcontractors and suppliers.

## 18. TERMINATION FOR DEFAULT

18.1 The following circumstances shall constitute events of default by Subcontractor:

- (a) Subcontractor is adjudged bankrupt or makes a general assignment for the benefit of creditors;
- (b) a receiver is appointed on account of Subcontractor's insolvency;
- (c) Subcontractor refuses or neglects to supply a sufficient number of properly skilled workers or sufficient materials of the proper quality;
- (d) Subcontractor fails to prosecute the Work with the promptness and diligence necessary to prosecute the Work in accordance with the then existing Subcontract Schedule;
- (e) Subcontractor fails to promptly or properly correct defective work as required by the Contract Documents;



- (f) Subcontractor fails to comply with Applicable Laws;
- (g) Subcontractor interferes with the work of WINTER JOHNSON or other subcontractors on the Project;
- (h) Subcontractor fails to remove a claim of lien or claim on any payment or performance bond filed against the Project by its subcontractors or suppliers;
- (i) Subcontractor fails to comply with its defense and indemnity obligations under this Subcontract;
- (j) Subcontractor fails to furnish WINTER JOHNSON with payment or performance bonds as required by the Subcontract;
- (k) Subcontractor fails to furnish or maintain insurance coverage in the form and amounts required by the Subcontract; or
- (l) Subcontractor breaches a material obligation of the Subcontract Documents.

18.2 If Subcontractor fails to cure an event of default within seventy-two (72) hours after receipt of written notice of default from WINTER JOHNSON, WINTER JOHNSON may, without prejudice to any other rights or remedies, terminate the Subcontractor and, subject to any prior rights of Subcontractor's surety: (a) exercise all rights and benefits of Subcontractor under any sub-subcontracts or material purchase orders, or both, issued by Subcontractor in connection with the Work; (b) supply such number of workers and quantity of materials, equipment and other facilities as WINTER JOHNSON deems reasonably necessary for the completion of the Work; (c) contract with one or more additional contractors to perform the Work as reasonably necessary to provide the most expeditious completion of the Work. WINTER JOHNSON shall be entitled to charge all reasonable costs incurred in this regard (including attorneys' fees), plus an amount equal to fifteen percent (15%) of all costs incurred in the completion of the Work for WINTER JOHNSON's administrative burden, which the parties agree is a reasonable estimate of the administrative burden which WINTER JOHNSON will incur and is not assessed as a penalty.

18.2.1 When WINTER JOHNSON terminates the Contract due to Subcontractor's default, Subcontractor shall not be entitled to receive further payment until the Work is finished.

18.2.2 If the unpaid balance of the Subcontract Price exceeds the expenses incurred by WINTER JOHNSON completing the Work plus any direct damages incurred by WINTER JOHNSON or Owner by virtue of the default, such excess shall be paid to Subcontractor within forty-five (45) days after WINTER JOHNSON's receipt of final payment from the Owner. If such expenses and damages exceed the unpaid balance of the Subcontract Price,

Subcontractor shall pay the difference to WINTER JOHNSON within ten (10) days after receipt of a written demand by WINTER JOHNSON accompanied by reasonable supporting documentation.

18.2.3 If WINTER JOHNSON performs any of Subcontractor's Work or sublets such Work to be performed, WINTER JOHNSON or the persons to whom Work has been sublet shall have the right to take and use all of the materials, implements, equipment, appliances or tools furnished by or delivered to Subcontractor and located on the Project, or other designated storage locations, all of which Subcontractor assigns and transfers to WINTER JOHNSON.

18.3 In the event Subcontractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, or takes any other action to afford itself protection under the bankruptcy laws of the United States, and should WINTER JOHNSON not otherwise have the right to terminate this Subcontract, then the Subcontractor, as a debtor-in-possession in a voluntary or involuntary bankruptcy case under Chapter 11 of Title 11 of the United States Code, shall immediately, but no later than fifteen (15) days from the date the bankruptcy is commenced, file with the Bankruptcy Court a motion and order pursuant to 11 U.S.C. § 365 assuming this Subcontract as written. Subcontractor shall expeditiously effect the entry of such an order approving the assumption of this Subcontract. Further, on or before the fifteenth (15th) day, Subcontractor shall cure all defaults that exist under this Subcontract pursuant to 11 U.S.C. § 365. Should Subcontractor fail to assume this Subcontract as specified above, then this Subcontract shall be deemed rejected as of the date the bankruptcy commenced. In the event this Subcontract is rejected or deemed rejected, Subcontractor consents to relief from the automatic stay pursuant to 11 U.S.C. § 362(d) without notice or hearing so that WINTER JOHNSON may exercise its rights and remedies under this Subcontract and against this Subcontractor.

18.4 In the event any termination for default of the Subcontractor under the Subcontract is determined improper, the termination shall be automatically converted to a termination for convenience.

18.5 Subcontractor shall incorporate provisions similar to this Article within agreements with its Subcontractors and suppliers.

## **19. SUSPENSION OF WORK BY SUBCONTRACTOR**

19.1 Subcontractor shall not be entitled to suspend or stop work except for a substantial and material breach by WINTER JOHNSON and WINTER JOHNSON's failure to cure such breach within fourteen (14) days after WINTER JOHNSON's receipt of a written notice of default from Subcontractor stating its intention to stop work and enumerating and substantiating each and every alleged breach by WINTER JOHNSON.



## 20. WARRANTY

20.1 Subcontractor and its sureties, if any, warrant that Subcontractor's Work shall be free from deficiencies and defects in materials and/or workmanship. The Subcontractor and its sureties further warrant that the Subcontractor's Work will conform to the requirements of the Contract Documents. Work, materials, or equipment not conforming to these requirements shall be considered defective. **All warranties shall be assigned directly to the Owner.**

20.2 In addition to the Subcontractor's obligations under Section 20.1, if, within one year after the date of Substantial Completion of the Work or such other time as specified in the Prime Contract (the "Correction Period"), any of Subcontractor's Work is found to be not in accordance with the requirements of the Contract Documents, the Subcontractor shall correct it promptly, or within such other times as specified in the Prime Contract, after receipt of written notice from WINTER JOHNSON to do so unless WINTER JOHNSON has previously given Subcontractor a written acceptance of such condition.

20.3 The Correction Period established by 20.2 relates only to the specific obligation of Subcontractor to correct the Work within the one year period following Substantial Completion or such other time as specified in the Prime Contract, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Subcontractor's liability with respect to the Subcontractor's obligations other than specifically to correct the Work.

## 21. IMMIGRATION AND SECURITY COMPLIANCE

21.1. Subcontractor and any and all of its subcontractors, laborers, and suppliers shall comply with all state and federal immigration laws, rules and regulations, and Subcontractor and its subcontractors, laborers, and suppliers shall provide WINTER JOHNSON with a completed and signed Immigration and Security Affidavit in the form attached hereto as **EXHIBIT I**.

21.2. To the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless WINTER JOHNSON and all of its affiliates, parents, subsidiaries, officers, directors, employees, successors and assigns (all of which are hereinafter collectively referred to as "Indemnities"), from and against all claims, damages, losses, costs and expenses, including but not limited to attorneys' fees, public relations costs, and work stoppages, arising out of or resulting from the failure of Subcontractor or its employees, agents, subcontractors or suppliers, to properly verify workers or otherwise to fully comply with applicable state and federal immigration laws, ordinance, rules, and regulations, including but not limited to any fines or penalties incurred by WINTER JOHNSON or Owner in connection therewith.

## 22. DAVIS-BACON ACT COMPLIANCE

22.1. Davis-Bacon Act. If this Project is performed pursuant to the Davis-Bacon Act, or any other law dealing with prevailing wages, Subcontractor agrees to comply with all provisions and regulations of such laws. Subcontractor further agrees to defend, indemnify and hold WINTER JOHNSON harmless from all damages and loss resulting from Subcontractor's failure to comply with such laws.

## 23. EMPLOYMENT LAW COMPLIANCE

23.1 Employment Law Compliance. The parties acknowledge and agree that Contractor and Subcontractor are not joint employers. Contractor will not be responsible for Subcontractor's non-compliance with wage and hour or any other federal or other Applicable Laws regarding the employment of Subcontractor's employees. Subcontractor shall indemnify and defend Contractor against all claims against Contractor arising out of Subcontractor's failure to comply with any employment laws.

## 24. MISCELLANEOUS PROVISIONS

24.1 Special Withholding for Georgia Projects. The State of Georgia requires general contractors to withhold up to two percent (2%) of the contract amount from the final payment to a **non-resident** Subcontractor unless WINTER JOHNSON receives written notification from the State of Georgia that (a) the Subcontractor is current with its sales taxes, (b) the Subcontractor has posted a bond with the Georgia Sales and Use Tax Division, or (b) the Subcontractor is not subject to sales and use tax. Subcontractor's delivery of such written notice to WINTER JOHNSON shall be a condition precedent to payment of any amounts withheld by WINTER JOHNSON pursuant to this statutory requirement.

24.2 Substance Abuse Policy. Subcontractor agrees that it will maintain and enforce a substance abuse policy with respect to its own employees which meets or exceeds WINTER JOHNSON's requirements.

24.2.1 If requested by WINTER JOHNSON, Subcontractor shall promptly: certify in writing that said policy is in force and that each of its employees has signed a urine drug screening/testing consent form; and provide a copy of said policy and copies of the urine drug screening/testing consent forms executed by Subcontractor's employees.

24.2.2 Subcontractor's employees found to be in violation of said policy will be subject to immediate removal from the Project.

24.3 Drug-Free Workplace Act of 1988. Subcontractor shall observe the requirements of the Drug-Free Workplace Act of 1988.

24.3.1 Subcontractor shall notify WINTER JOHNSON in writing within ten (10) days after receiving notice from an employee of a workplace criminal conviction,





or otherwise receiving actual or constructive notice of same.

24.4 Equal Opportunity Clause. Subcontractor shall comply with all applicable affirmative action and equal opportunity laws and regulations, including any Owner's affirmative action program. In connection with performance of Work under this Subcontract, the Subcontractor further agrees as follows:

24.4.1 Subcontractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, age, disability, marital status, sexual orientation, veteran status, or gender, except where gender is a bona fide occupational qualification.

24.4.2 If requested by WINTER JOHNSON, Subcontractor shall promptly deliver to WINTER JOHNSON written certification of its compliance with the obligations of this Equal Opportunity Clause

24.4.3 In the event of Subcontractor's noncompliance with this Equal Opportunity Clause or with any of the said rules, regulations or orders, this Subcontract may be canceled, terminated or suspended in whole or in part.

24.4.4 Subcontractor will include the requirement of this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor.

24.5 Exclusive Relationship. Until final completion of the Project, Subcontractor agrees not to: (1) perform any work directly for Owner, its tenants or any other contractors or subcontractors on the Project; and (2) communicate directly with Owner's representatives, including but not limited to the Architect, in connection with the Project, unless authorized in advance in writing by WINTER JOHNSON. All of Subcontractor's communications with the Owner or Architect in relation thereto, shall be through WINTER JOHNSON. In the event Subcontractor performs any work in violation of this provision, it agrees to make no claims against WINTER JOHNSON in connection therewith.

24.6 Governing Law. All matters relating to the validity, performance, or interpretation of this Subcontract shall be governed by the laws of the state where the Project is located.

24.7 No Waiver. No requirements of this Subcontract may be waived except in writing signed by a duly

authorized officer of the waiving party. No action or failure to act by the Owner, the Architect or WINTER JOHNSON shall constitute a waiver of any right or duty afforded any of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing by a duly authorized officer of the waiving party.

24.8 "Days" Defined. Unless indicated otherwise, the term "days" shall mean calendar days.

24.9 "Applicable Laws" Defined. Applicable Laws are any federal, state, or local law, rule, code, regulation, ordinance, standard, permit or requirements that applies to the Project, or any order ruling, or decision of any governmental or quasi-governmental body having jurisdiction over the Project.

24.10 Entire Agreement. This Subcontract constitutes the entire agreement between the parties to perform their respective duties and obligations. This Subcontract supersedes all prior negotiations, representations, and agreements, whether oral or written, between WINTER JOHNSON and Subcontractor, and may only be modified or amended in accordance with the terms herein. WINTER JOHNSON and Subcontractor agree that this Agreement is deemed to have been negotiated, drafted and agreed to by the parties in an arms' length transaction and no inference or presumption should be

drawn against either of them with respect to the drafting of this Agreement, including but not limited to any ambiguities which may exist herein.

24.11 Changes in Writing Only. This Subcontract may not be changed in any way except as herein provided or by a writing, signed by a duly authorized officer or agent of each party.

24.12 Severability. If any part or portion of the Contract Documents is held invalid or is otherwise unenforceable, the remaining parts or portions thereof shall be given full force and effect

**24.13 Third-Party Beneficiary. The Owner is hereby expressly identified as an intended third-party beneficiary of this Subcontract.**

**24.14 Subcontractor shall submit a Promise of Non-Discrimination to WINTER JOHNSON to be sent to the owner prior to being selected.**

IN WITNESS WHEREOF, the parties, through their respective authorized representatives, execute this Subcontract so as to be effective on the date first stated above.

"Subcontractor"

"WINTER JOHNSON"

*Company Name*

**WINTER JOHNSON GROUP**

By: \_\_\_\_\_  
*Signature*

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name*

Patrick Nesbitt  
*Printed Name*

Its: \_\_\_\_\_  
*Title*

Its: Project Manager  
*Title*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SUPPLEMENTARY CONDITIONS**

1. Subcontractor is required to obtain its own set of Contract Documents. WINTER JOHNSON will use PlanGrid, or similar software, for document control. Subcontractor will be required to provide / obtain subscription for its onsite supervision.
2. Subcontractor shall have in attendance at all meetings a qualified representative with full authority to bind Subcontractor. Meetings requiring attendance by Subcontractor may include Scheduling, Coordination, Pre-Installation, Pre-Construction, Owner/Architect/Contractor meetings and others as required for coordination and performance of the Work.
3. WINTER JOHNSON will conduct weekly Safety meetings. All on-site personnel are required to attend weekly jobsite safety meetings. Subcontractors may opt out of WINTER JOHNSON's safety meetings provided: 1) Subcontractor's Foreman and/or Safety representative attends WINTER JOHNSON's Safety Meetings and 2) Subcontractor's Foreman furnishes WINTER JOHNSON a copy of the minutes and attendance records from Subcontractor's safety meetings each week in which Subcontractor performs Work on site.
4. Coordination Drawings. Subcontractor shall cooperate with WINTER JOHNSON and other subcontractors in the preparation of coordination drawings, especially with respect to areas where work of different trades is congested.
  - 4.1 If required, Subcontractor shall submit a set of CAD coordination and/or shop drawings.
  - 4.2 If applicable, Subcontractor agrees to provide a complete, 3d digital model to represent its coordination drawings, shop drawings and/or record documents. 3d modeling software must be compatible with Navisworks 2015 or later. Subcontractor's model may be integrated with an overall Federated Model and used for coordination for the Project.
    - 4.2.1 Subcontractor shall (i) provide information; (ii) collaborate with WINTER JOHNSON, its subcontractors and other Project participants and (iii) participate in developing, maintaining and updating the 3d digital model for use by the various Project participants as required by WINTER JOHNSON.
    - 4.2.2 Subcontractor shall provide adequate labor to update models to support the Project Schedule, attend coordination meetings, resolve conflicts with other trades between meetings, and maintain "as-built" record of models as required. Subcontractor shall have in attendance at coordination meeting, a representative authorized to make decisions on the Subcontractor's behalf.
    - 4.2.3 Subcontractor shall include all items to be installed in the field in its model. Subcontractor shall be responsible for costs to correct items resulting from work that is not coordinated within the modeling process due to insufficient information from Subcontractor.
    - 4.2.4 Materials, equipment, accessories and supporting systems to be installed shall be modeled to a level of detail which meets or exceeds LOD 350 of the BIMForum Level of Development Specification, 2015 unless other approved by WINTER JOHNSON.
    - 4.2.5 Pipes and conduit greater than 1" shall be modeled. All pipes and conduit in runs of two or more shall be modeled regardless of size.
    - 4.2.6 Clearance zones, access zones and maintenance zones shall be modeled as "space constraints" on a separate layer.
    - 4.2.7 Hangers, mounting equipment, additional bracing, equipment pads or related ancillary installation requirements for Subcontractor's Work shall be modeled.
    - 4.2.8 Subcontractor may provide modeling services in house or through a sub-subcontractor with appropriate experience and qualifications.
    - 4.2.9 Subcontractor shall maintain "as-built" condition of its model, including updating models to reflect discrepancies resulting from field adjustments during installation.
  - 4.3 Subcontractor assumes toward WINTER JOHNSON all the same obligations, rights, duties and redress that WINTER JOHNSON assumes toward the Owner and architect/engineer with respect to the 3d digital model as it relates to the Subcontractor's Work.
5. Submittals, Shop Drawings and Samples. All submittals required by the Contract Documents or as otherwise necessary to describe the details of the Subcontractor's Work must be submitted in a timely manner so as not to delay prosecution of the Work. Unless otherwise agreed in writing, all submittals are due within fourteen (14) days of Subcontractor's



execution and delivery of this Subcontract to WINTER JOHNSON or Subcontractor's receipt of a Notice to Proceed from WINTER JOHNSON, whichever is sooner.

- 5.1 Within five (5) days of the Effective Date award, Subcontractor has brought to the attention of WINTER JOHNSON all long lead items that will impact Subcontractor's schedule so that WINTER JOHNSON can release & procure these items in a timely manner.
- 5.2 Subcontractor should allow at least six (6) weeks for review of submittals by WINTER JOHNSON, the Owner and the Architect.
- 5.3 If any submittal is rejected by WINTER JOHNSON, the Owner or the Architect, Subcontractor agrees to correct and resubmit the submittal as soon as practicable, but not more than seven (7) days after receipt, to avoid or minimize Project delays.
- 5.4 Approval of shop drawings or other submittals by the Owner, the Architect or WINTER JOHNSON shall not relieve Subcontractor of its obligation to perform the Work in accordance with the Contract Documents.
- 5.5 Subcontractor agrees to submittals in hard copy or electronic format as required. Required quantity for hard copy submittals shall be as required by the Contract Documents or as determined by WINTER JOHNSON. Submittals for each specification section should be compiled and provided as one complete submittal package. WINTER JOHNSON may elect not to review partial submittal packages.
6. Requests for Information. All requests for information concerning the Subcontractor's Work must be made through WINTER JOHNSON.
7. Layout of Work. Subcontractor is responsible for layout of its Work. Prior to commencing any portion of Subcontractor's Work, Subcontractor shall verify drawing dimensions and actual field conditions which affect its Work and immediately notify WINTER JOHNSON of any errors, inconsistencies or omissions it may discover. WINTER JOHNSON will establish only principal control lines and benchmarks for the Work. Subcontractor shall be responsible to accurately layout Subcontractor's Work. Subcontractor shall be responsible for any loss or damage to WINTER JOHNSON or others due to Subcontractor's failure to notify WINTER JOHNSON of any error, inconsistency or omission it may discover, or to accurately layout or properly perform Subcontractor's Work. Should Subcontractor disturb or destroy any controls, survey lines, or layout performed by WINTER JOHNSON or others, Subcontractor shall reimburse the affected party for the costs of restoring same.
8. Mobilization and Deliveries. Subcontractor shall obtain WINTER JOHNSON's approval before (1) arrival of its work forces to the jobsite, (2) delivery of materials and equipment to the jobsite, (3) before any substantial change in its work force, and (4) before demobilizing from the jobsite for any reason.
  - 8.1 Subcontractor understands that multiple mobilizations may be required to complete the Work covered in this contract and has included all costs related to multiple mobilizations.
  - 8.2 Shipping, loading, unloading, distribution, staging and storage of all materials and equipment and security of all Subcontractor's material stored at the site are the sole and exclusive responsibility of Subcontractor. Any hoisting required for the Work of this Subcontract is the responsibility of the Subcontractor. Subcontractor shall coordinate in advance all storage or staging of materials with WINTER JOHNSON. Subcontractor understands that storage and staging areas may not be available on site. Costs for off-site storage or handling are the responsibility of the Subcontractor.
  - 8.3 WINTER JOHNSON may elect to refuse delivery of materials by Subcontractor due to non-coordinated deliveries, space and work limitations.
9. Acceptance of Surface or Substrate. Prior to commencing each portion of the Work, Subcontractor shall inspect the surface or substrate upon which that portion of the Work will be placed. Subcontractor shall immediately notify WINTER JOHNSON of any unacceptable conditions, defects or irregularities observed. By commencing its Work, Subcontractor accepts the surface or substrate upon which its Work will be placed, waiving any claims arising from any defect or irregularity in the surface or substrate that proper inspection would have revealed. Should Subcontractor's Work require that testing be performed to verify acceptability of surface or substrate, Subcontractor shall be solely responsible for ensuring such tests, as required by the Contract Documents or manufacturer's instructions, are performed and test results provided to WINTER JOHNSON.
10. Cutting, Patching and Repairing. Unless otherwise provided in the Contract Documents, it is the responsibility of Subcontractor to cut, patch or repair any Work which must be cut or removed for the performance of the Work.

11. Temporary Shoring and Bracing. Unless otherwise provided in the Contract Documents, Subcontractor is responsible for any temporary shoring, bracing, guying, or supports necessary for the prosecution of the Work.
12. Jobsite Regulations and Work Hours.
  - 12.1 Subcontractor agrees to comply with the Owner's and WINTER JOHNSON's reasonable jobsite regulations concerning the conduct of personnel at the Project site.
  - 12.2 WINTER JOHNSON will establish jobsite hours during which Work shall be performed by all Subcontractors, and Subcontractor shall perform work within the jobsite hours established. Subcontractor may not perform work outside of established jobsite hours without written approval from WINTER JOHNSON. Subcontractor shall make up lost days due to inclement weather by working extended hours or working on Saturdays or Sundays as allowed by the specific jobsite work hours.
  - 12.3 Subcontractor understands that, if sufficient parking for all construction personnel is not available, Subcontractor will be responsible for all costs required for off-site parking and transportation for its labor. Illegal parking on side roads or in residential areas shall not be permitted.
  - 12.4 Street Cleaning. Subcontractor shall clean all trucks & equipment prior to leaving the jobsite. Subcontractor shall be responsible for cleaning streets of mud, dirt and debris caused by its Work. Subcontractor shall be responsible for all fines assessed for failure to prevent mud, dirt and debris from areas outside of the jobsite.
  - 12.5 Tobacco and smoking are not allowed in the building at any time. Eating or drinking will not be allowed in the building after the start of finishes.
  - 12.6 Cleaning Up. Subcontractor shall keep the premises at all times free from waste materials and debris accumulated in connection with the Work. Subcontractor shall perform clean up daily. Should Subcontractor fail to perform clean-up work within twenty-four (24) hours of receiving a written request from WINTER JOHNSON, WINTER JOHNSON may perform the clean-up work and deduct the costs incurred (including costs for supervision and reasonable markup for overhead and profit) from any payment due or to become due to Subcontractor.
13. Protection of Work/ Ongoing Operations
  - 13.1 Underground Utilities. Whenever applicable to Subcontractor's Work Subcontractor shall not begin to perform Work until all underground utilities have been properly located and protected. Subcontractor shall be responsible for arranging for utility locate services. Subcontractor shall be responsible for costs required to repair damage to utilities resulting from failure to ensure proper location and protection and for damage to utilities that were properly marked.
  - 13.2 Subcontractor understands that it must take precautions so as not to affect or disrupt adjacent operations and/or properties.
  - 13.3 Subcontractor shall protect existing finishes, the work of other trades, and any stored materials from damage, including the use of tarps, plastic, and/or other protection, while working. Subcontractor shall be responsible for all costs associated with repairs or replacement due to damage.
  - 13.4 Any modifications or shutdowns of building systems will be coordinated with WINTER JOHNSON superintendent prior to work commencing. Any expense/loss arising from an unscheduled shutdown performed by Subcontractor will be borne by Subcontractor.
  - 13.5 Subcontractor shall submit data for any equipment to be used on any elevated structure (lifts, skid steers, etc.) to WINTER JOHNSON for approval prior to placing or operating equipment on elevated structure.
14. Any costs of re-testing due to failure of this Subcontractor's Work will be completed at this Subcontractor's expense.
15. Provide fire sealing and safing as required for penetrations through fire rated walls created through Work under this scope. All floor and wall penetrations must be properly collared, filled, and/or sealed to meet all applicable codes. All penetrations through fire-rated partitions are to be sealed using approved fire sealing products.
16. Project Close Out.
  - 16.1 Subcontractor shall provide all required close out items as required by the Contract Documents, including but not limited to: warranties, extended warranties, manufacturer data, attic stock, as-built documents, training and operation and maintenance data. Attic stock and Operation & Maintenance information shall be provided sixty days (60) prior to substantial completion, unless another date has been agreed to by WINTER JOHNSON.

- 16.2 Subcontractor is responsible to perform maintenance and service programs, warranty/guarantee follow-ups, factory startups and seasonal adjustments or inspections as specified in the Project Manual.
- 16.3 Subcontractor shall be responsible for videotaping all required owner training. Subcontractor shall provide CDs of training with close out documents as required.
- 16.4 Provide attic stock in quantities as specified in the contract documents. Coordinate turnover of attic stock with WINTER JOHNSON prior to delivery at the job site. Subcontractor must turn over attic stock to a designated WINTER JOHNSON representative, with a transmittal outlining material and quantities for signature prior to handover.
- 16.5 Record Documents: Subcontractor is required to maintain a set of record drawings, noting all changes, modifications or differing conditions affecting the Work, both existing and as constructed. Record drawings shall be maintained at the jobsite and shall be updated on a weekly basis.
- 16.6 Punch-list: Subcontractor shall provide written notice to WINTER JOHNSON that an area is ready for inspection. Notice must be accompanied with the written punch list produced by the Subcontractor indicating Subcontractor has inspected Subcontractor's Work and remedied noted deficiencies.



**WORK AND PROJECT REQUIREMENTS**

Subcontractor shall prosecute and complete the \_\_\_\_\_ Scope of Work.

The following items are included as part of this Subcontract and are listed for clarification only. They are not intended to limit the scope of Work nor do they diminish the Subcontractor’s obligation to provide a complete and fully functional installation. The scope of Work includes, but is not limited to, the following:

**A. General Requirements**

1. Subcontractor acknowledges existing site and soil conditions as described in “Geotechnical Exploration Report”, prepared by Wood Environmental & Infrastructure solutions, Inc. dated July 2, 2020.
2. This project includes architecturally exposed structural steel (AESS), including columns, beams, joists, and roof decking. Subcontractor agrees that no connections, penetrations, or other modifications will be made to the exposed steel building elements without prior written approval from the Architect. Subcontractor will be responsible for cost and schedule impacts associated with repair and replacement of AESS if any modifications are made during the performance of this scope of work without prior approval from the Architect. SUBCONTRACTOR will also be responsible for all cost and schedule impacts associated with any damage to AESS elements resulting from the performance of this scope of work.

**B. Trade Specific Requirements**

1. Subcontractor to include all labor, equipment, materials, and other reasonably incidental items necessary to <design and> install the **ENTER SCOPE HERE** scope of work, including, but not limited to, the following:
  - a.

**C. Unit Prices:** In accordance with Article 3.2, the following unit prices shall be used in connection with the following items of Work. Unit Prices includes all costs of Subcontractor's performance of this Work, including, by way of example and not limitation, the costs of labor, supervision, materials, equipment, insurance, taxes, jobsite overhead, home office overhead, profit and any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply. Additional work performed by Unit Price must be reconciled by Change Order. Subcontract shall provide a record of work performed on a Unit Price basis in accordance with 9.7.

Unit Price(s) (Inclusive of OH&P): \$ N/A

**D. Allowances:** The Subcontract Price specified in the Subcontract includes the following allowances, if any, to be furnished by Subcontractor in accordance with the Contract Documents. Each allowance and costs associated with each allowance must be reconciled by change order. If work associated with an allowance is performed on a unit price basis, Subcontractor shall provide a record of time and material no later than the following business day. Subcontractor shall not perform work associated with an allowance without prior written approval from WINTER JOHNSON. Subcontractor shall not exceed the amount of the allowance without prior written approval from WINTER JOHNSON. Such Allowances are considered complete and include all materials, taxes, equipment, labor, delivery, installation, overhead, and profit and any other costs or expenses in connection with or incidental to, the performance of that portion of the Work to which such Allowances apply.

Allowance: \$ N/A

**E. Temporary Site Facilities**

Pursuant to the terms of the Subcontract, WINTER JOHNSON will furnish Subcontractor with the following temporary site facilities and equipment:

Item	By Winter Johnson	By Subcontractor
Dumpsters	XX	
Temporary Power	XX	
Temporary Toilets	XX	
Temporary Water	XX	
Drinking Water		XX

As soon as the Work progresses so that temporary power can be established on site, WINTER JOHNSON will provide 120-volt temporary power system within 100 feet of work areas. Special power connections for welders, saws or other specialty equipment will not be provided. Intermittent interruption of the temporary power will occur from time to time. Subcontractor will use generators or other sources of power prior to establishment of temporary power and during times of intermittent disruption.

**F. Schedule**

Without limiting any provisions contained in the Subcontract, Subcontractor shall perform the Work and its several parts according to the following schedule, as the same may be revised from time to time by WINTER JOHNSON pursuant to the terms of the Subcontract.

See attached Schedule, dated                     .

**DRAWINGS, SPECIFICATIONS AND OTHER CONTRACT DOCUMENTS**

The Contract Documents shall include the following drawings, specifications and other documents:

See attached Drawing Log – Appendix A dated [REDACTED].

See attached Specifications Log – Appendix B dated [REDACTED].