

SUPPLEMENTAL SUBCONTRACTOR AGREEMENT – WAR CONSTRUCTION, INC. 2017 EDITION

This agreement modifies ConsensusDocs No. 750: Standard Agreement Between Constructor and Subcontractor 2011, Revised 2017 as described below:

ARTICLES:

1. **AGREEMENT** – No Change
2. **SCOPE OF WORK** – See Below
3. **SUBCONTRACTOR'S RESPONSIBILITIES** – See Below
4. **CONSTRUCTOR'S RESPONSIBILITIES** – See Below
5. **PROGRESS SCHEDULE** - No Change
6. **SUBCONTRACT AMOUNT** - No Change
7. **CHANGES** – See Below
8. **PAYMENT** – See Below
9. **INDEMNITY, INSURANCE and BONDS** – See Below
10. **SUSPENSION, NOTICE TO CURE, AND TERMINATION** – No Change
11. **DISPUTE MITIGATION AND RESOLUTION** – See Below
12. **MISCELLANEOUS** – No Change
13. **SUBCONTRACT DOCUMENTS** – No Change

REVISIONS:

2.4.1 DOCUMENTS IN ELECTRONIC FORM, *Add* Constructor may unilaterally require the Subcontractor to utilize the following software: *Adobe Acrobat* provided by *Adobe Systems, Inc.*; *Bluebeam, Inc.*; *AutoCAD* and *Revit 3D* systems as licensed by *Autodesk, Inc.*; *Dropbox*, a file hosting service of *Dropbox, Inc.*; *Tekla Bimsight* by *Trimble*; and/or *Procore Construction Management* software by *Procore Technologies, Inc.* The same document may be required to be submitted in multiple formats.

2.6.1.1 *Delete section and replace with:* Exhibits shall be numbered as attached to Constructors "Letter of Award and Subcontract Agreement" which also incorporates this supplemental agreement.

3.7.1 SUBMITTALS: *Delete and replace the 4th sentence with:* "The Subcontractor shall notify the Constructor in writing if he seeks a deviation from the contract documents prior to submitting data. The Constructor shall have the unilateral decision to reject deviations, if the time required to review and approve will delay timely completion of the project."

3.8.1 *Delete and replace the 2nd sentence with:* As permitted by the laws, rules, and regulations in the jurisdiction where the Project is located, the Subcontractor shall procure such services and any necessary certifications from licensed and properly insured (with limits of liability currently available of an amount not less than \$1,000,000 per professional incident) design professional.

3.13.3 TEMPORARY SERVICES: *Add the following section:* "The Constructor will provide the Subcontractor portable toilets and an onsite community container for non-hazardous debris. No other temporary services are provided unless expressly described and attached to the Letter of Award and Subcontract Agreement."

3.14.5 *Delete and replace the 1st sentence with:* The Subcontractor is required to designate an individual at the Worksite in the employ of the Subcontractor who shall act as the Subcontractor's designated safety representative with a duty to prevent accidents; such designee shall meet OSHA definition of "competent person".

3.14.7 *Delete and replace the article with:* The Subcontractor shall give prompt written notice to the Constructor of any accident.

3.14.9 SAFETY: *Add the following section:* Subcontractor shall indemnify the Constructor from the direct cost of fines levied by OSHA, against the Constructor, under the "OSHA multi-employer worksite policy".

3.27 COMPLIANCE WITH LAWS: *Add sentence:* Subcontractor specifically acknowledges existence of the State of Alabama and Federal Immigration Laws and certifies that the Constructor has not authorized or specified any exception to compliance with these laws.

4.3 CONSTRUCTOR APPLICATION FOR PAYMENT: *Add sentence:* "The data supplied will be limited to Subcontractors portion of the application for payment."

4.5 STORAGE AREAS: *Delete second sentence.*

4.7 USE OF CONSTRUCTOR'S EQUIPMENT: *Delete and replace with the following article:* In the event the Subcontractor damages the Constructor's owned, leased or rented equipment by direct use, the Subcontractor shall be liable to the Constructor as provided in ARTICLE 9 of this agreement. Sections 3.25 and 3.25.1 shall apply to the Subcontractor under all conditions, including, but not limited to the following:

- a. authorized use granted by Constructor to Subcontractor
- b. unauthorized use by Subcontractor of Constructor's jobsite equipment
- c. use by Subcontractor employees, Sub-Subcontractors or agents, whether authorized or unauthorized by Subcontractor's jobsite and/or home office management.

4.8 USE OF SUBCONTRACTOR'S EQUIPMENT: *Add the following section:* If the Constructor or any of its agents, employees, or suppliers utilize any of the Subcontractor's equipment, including machinery, tools, scaffolding, hoists, lifts, or similar items owned, leased, or under the control of the Subcontractor, the Constructor shall indemnify and be liable to the Subcontractor as provided in ARTICLE 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Subcontractor's employees operating the Subcontractor's equipment, or the Subcontractor's failure to properly maintain said equipment.

7.2 CONSTRUCTION INTERIM DIRECTIVES: *Delete the 3rd sentence and replace with:* Interim payments for disputed change orders shall be limited to cost of the work.

7.6 ADJUSTMENTS: Unless otherwise agreed, maximum combined overhead and profit shall be limited to 15% of the cost of the work.

8.2.4 Delete all references to materials stored off the jobsite. Constructor unilaterally reserves the right to deny any subsequent agreement to permit billing for Subcontractor materials stored off the designated jobsite. In the event that the Constructor unilaterally elects to permit billing and subsequent payment to Subcontractor, the Constructor will only approve payment for materials stored off site after execution of ConsensusDOCS rider #750.1 between Constructor and Subcontractor, as an amendment to this agreement.

8.2.5 *Delete last sentence and replace with:* Receipt of payment by the Constructor from the Owner for the subcontract work is an express and absolute condition precedent to payment by the Constructor to the Subcontractor except on the express condition that and limited to the extent that Constructor is solely responsible for the Owner's failure or refusal to make payment. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Constructor, for payment of the subcontract work. The Subcontractor expressly assumes the risk of non-payment by the Owner except on the express condition that and limited to the extent that Constructor is solely responsible for the Owner's failure or refusal to make payment.

8.2.7.7 THIRD PARTY CLAIMS: *Add the following sentence:* Upon evidence of past due payments by Subcontractor for materials, labor, equipment, or supplies related to this project, Constructor may unilaterally issue joint payable checks to a third party and require the third party to secure the signature of the Subcontractor.

9.1.1 INDEMNITY *Delete and replace the article with:* To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Constructor, Design Professional, Owner, their agents, consultants, and employees (the "Indemnitees") from any and all claims of any nature whatsoever, including but not limited to bodily injury and property damage of any type and nature that may arise from the performance of the Subcontracted work, including REASONABLE ATTORNEYS' FEES, costs and expenses that may arise from the performance of the Work. This indemnity and hold harmless requirement shall extend to Subcontractor's subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable or gain benefit from.

9.1.2 NO LIMITATION ON LIABILITY *Delete and replace the article with:* In any and all claims of any nature whatsoever made against the Indemnitees by any employee of Subcontractor or Subcontractor's subcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable or gain benefit from, this indemnification obligation shall not be limited in any way by any limitation on the amount of or type of damages, compensation or benefits payable by or for Subcontractor or Subcontractor's subcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable or

gain benefit from under any workers compensation act, disability benefit act or any other employee benefit act nor shall the "minimum limits of liability insurance" noted herein be considered a limitation of liability.

9.2.2 MINIMUM LIMITS OF LIABILITY Replace Exhibit F with Section 9.5.

9.2.3 PROFESSIONAL LIABILITY INSURANCE *Delete and replace the article with:* "The professional liability insurance policy shall contain the following minimum limits": \$1,000,000 for each professional incident and a \$2,000,000 policy aggregate with a maximum deductible of \$10,000 per claim. This insurance shall contain prior acts coverage (or a retroactive date) sufficient to cover all subcontract services rendered by Design Professional. Said insurance shall be continued in effect without a reduction of limits for a period of (2) two years post job completion. Subcontractor or his Design Professional shall be responsible for 100% (one hundred percent) of any deductible that may apply to any deductible or coverage gap. Subcontractor shall provide copies of currently valued loss history from Design Professional on a semi-annual basis.

9.2.3.2 Add "including all endorsement pages" to line #3, after the word "policy"

9.2.5 Item (a): add "or materially altered" after the word "non-renewed"
Item (b): change "after cancellation" to "prior to cancellation"

9.2.6 Change (1) year to (2) two years post job completion for completed operations coverage

9.2.7 *Add the following sentence:* Subcontractor shall be responsible for any deductible for damage to their own work.

9.2.10.1 *Delete and replace with:* ADDITIONAL INSURED. Constructor shall be named as an additional insured on Subcontractor's Commercial General Liability specified, for on-going operations and completed operations for a period of not less than (2) two years post job completion, excess/umbrella liability, professional liability, commercial automobile liability, and any required pollution liability. The insurance of the Subcontractor shall be primary and non-contributory to any insurance available to the Additional Insureds and/or Indemnities.

9.3 *Delete article 9.3 BONDS.*

9.4 Add the following: MINIMUM LIMITS OF LIABILITY

The Subcontractor shall procure and maintain with insurance companies licensed in the jurisdiction in which the Project is located and acceptable to the Constructor, which acceptance shall not be unreasonably withheld, at least the limits of liability as set forth below:

A.	Comprehensive General Liability Insurance including ongoing and completed operations	
	1. Each occurrence limit	\$1,000,000
	2. General aggregate	\$2,000,000
	3. Products/Completed operations aggregate	\$2,000,000
	4. Personal and Advertising Injury limit	\$1,000,000
B.	Comprehensive Automobile Liability Insurance	
	1. Combined single limit of liability	\$2,000,000
C.	Employer's Liability	
	1. Each accident	\$1,000,000
	Disease	\$1,000,000 each employee \$1,000,000 policy limit
D.	Umbrella Liability	
	1. Each occurrence limit	\$6,000,000
E.	Worker's Compensation	Statutory Limits

11.3.3 BINDING DISPUTE RESOLUTION:

Remove: the Parties shall submit the matter to the binding dispute resolution procedure selected below, *and replace with:* Constructor shall have sole unilateral right to elect arbitration (article 11.3.3.1) or litigation (article

11.3.3.4).

Delete: the current JAMS Engineering and Construction Arbitration Rules and Procedures and administered by JAMS, or the current arbitration rules of [_____] and administered by [_____].

Delete: If not indicated in §11.3.3 through §11.3.4, then litigation is the default and not arbitration.