



CONSTRUCTION AGREEMENT

CONTRACT #:	
PROJECT #:	
ACCT. CODE:	
DATE:	

PANATTONI CONSTRUCTION, INC., a California Corporation, hereafter called “Contractor” (“Contractor” shall also mean “Design-Builder” when used in the Prime Contract), with offices at 6840 Fort Dent Way, Suite 350, Seattle, WA 98188, and _____, hereinafter called the “Subcontractor”, whose address is: _____, State contractor’s license No. _____, phone: _____, fax: _____, agree as follows (“Agreement” or “Subcontract”):

Subcontractor having thoroughly informed itself of the conditions surrounding the work by thorough examination and comparison of all plans and specifications, and job site conditions insofar as they relate in any way to the work to be undertaken herein such that Subcontractor can perform all Work and requisite duties, obligations and responsibilities, including those reasonably inferable therefrom, under this Agreement for the cost specified below, subject to adjustments as permitted in this Agreement, agrees to complete the work described below to the best of its ability and in a professional and workmanlike manner, in strict accordance with the Subcontract Documents including the general and special conditions and details illustrative thereof, and in accord with Contractor’s schedule.

1. Project Name: _____ **Project Location:** _____

Owner: _____

2. Scope of Work: Subcontractor agrees to perform the following work: Provide all material, labor, equipment, hoisting and supervision required to _____

3. Subcontract Documents: The Subcontract Documents shall consist of the Plans & Specifications; Exhibit A: Subcontractor Safety, Health, and Environmental Minimum Performance Standards (“Safety MPS”); Invitation to Bid dated _____; Addenda, if any; Contractor’s Schedule; Change Orders issued in accordance with Section 13; this Agreement; and the agreement between Owner and Contractor for the Project, including all contract documents included thereto, as redacted by Contractor at its sole discretion (“Prime Contract”). The Subcontract Documents are incorporated into this Agreement by reference. The Subcontractor’s proposal may be included for the sole purpose of establishing the scope of work to be performed. The provisions of this Agreement shall take precedence over any conflicting terms of the Subcontractor’s proposal. In case of any inconsistency, conflict or ambiguity among the Subcontract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement, (b) this Agreement, including any Exhibits, Contractor’s Schedule, Exhibit A: Safety MPS, and Addenda; (c) the Prime Contract between Owner and Contractor (however the Prime Contract or a portion of it shall take precedence over the Agreement and documents in (b) above (1) to the extent a provision in the Prime Contract states that such provision must be inserted in this Agreement (i.e. Subcontract), or such similar language and intent, or (2) the Prime Contract states that the Prime Contract as a whole takes precedence over this Agreement); (d) Specifications; (e) Drawings; (f) approved submittals; and (g) other documents listed in this Agreement. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

4. Plans & Specifications: _____

5. Payment: Contractor shall pay to Subcontractor, as full compensation for all the work hereunder the following amount:

and no/100----- \$

- .1 The above prices shall include all applicable Sales, Use, Franchise, Excise and other taxes, which may now or hereafter be levied.
- .2 In the event the above price is a unit price based on quantities, final payment shall be for actual quantities determined by the Engineer of Record or other representative of Contractor, upon completion of all work hereunder.

6. Time: Time is of the essence of this Agreement. The Subcontractor shall commence work promptly as directed by the Contractor, and prosecute the same energetically and expeditiously, in full cooperation with the Contractor, other Subcontractors

and in accord with the requirements of the Subcontract Documents and Schedule as determined by the Contractor until fully completed and accepted by Contractor and Owner for the price specified herein. Subcontractor shall complete the work in accord with the Contractor's Schedule, except as otherwise modified as permitted by the terms herein. If Contractor deems it necessary, Subcontractor, at its own expense and on demand of Contractor, shall provide additional work forces, overtime and additional shifts, and shall expedite the furnishing of materials so as to meet the Contractor's Schedule. Subcontractor's Work under that Schedule shall be deemed to have commenced upon the earlier of a notice to proceed from Contractor or Subcontractor's actual commencement of any portion of the Work. Subcontractor agrees to reimburse Contractor for any and all liquidated damages that may be assessed against Contractor by Owner which are attributable to or caused in whole or in part by Subcontractor's failure to perform the Work as provided herein. In addition, Subcontractor agrees to pay to Contractor such other and additional damages as Contractor may sustain by reason of any delay by Subcontractor. Payment of such damages by Subcontractor shall not release Subcontractor from its obligation to otherwise fully perform this Agreement. Unless otherwise specified, the term Day shall mean a calendar day.

7. Subcontractor's Duties; Non-Assignability: Subcontractor shall at its sole cost and expense comply with all State and Federal laws, ordinances, codes and regulations of all governmental authorities relating to said work or workpersons, including but not limited to health, safety, employment and environmental laws, employ labor under conditions satisfactory to the Contractor and remove and replace any employees unsatisfactory to the Contractor; protect its Work, the work of others and the Project from damage caused by its activities; secure and protect all its materials until permanently installed; furnish and maintain all insurance policies hereinafter required; insure its own risk in or about the Project, remove and replace promptly all its defective, deficient or non-conforming work or material at its sole cost and expense; and immediately report to Contractor in writing any errors, inconsistencies, or omissions relating to its Work, any substrate or related work if Subcontractor's work shall be installed/performed on top of or in relation to another subcontractor's work. By performing its Work on top of or in relation to another subcontractor's work, Subcontractor represents that it has inspected the underlying or related work and that such work is sufficient to receive Subcontractor's Work and such underlying or related work does not contain any patent defects or deficiencies. Subcontractor shall not assign or sublet this Agreement, or any portion hereof, nor any monies due or to become due Subcontractor hereunder, without previous written consent of the Contractor; and Subcontractor shall not deviate from said plans, specifications and details, except on written order of the Contractor. Subcontractor warrants that it is licensed to perform the work contracted for herein by all necessary public and governmental agencies and entities. Subcontractor shall prepare shop drawings and submittals accurately and provide such shop drawings and submittals to Contractor in a timely manner in strict accordance with Contractor's Schedule. Contractor and/or Owner's review of shop drawings and submittals shall not relieve Subcontractor from performing the Work in strict compliance with the Subcontract Documents and free from defects and deficiencies. Contractor's review shall not waive any of its rights against Subcontractor under this Agreement.

8. Subcontractor as Independent; Indemnification: The Subcontractor shall be responsible to Contractor and Owner for the acts and omissions of the Subcontractor's employees, sub-subcontractors, guests, and their agents and employees, and other persons performing any portion of the Work under a contract with the Subcontractor.

Subcontractor agrees to defend, indemnify, and hold harmless Contractor and the Owner from any and all claims, demands, suits, actions, proceedings, losses, damages arising out of or in any way connected with the work performed or to be performed under this Agreement by Subcontractor, its agents or employees, even though such claims may prove to be false, groundless or fraudulent, and subject to the limitations provided below.

The Subcontractor shall indemnify the Contractor and the Owner against, and save them harmless from, any and all loss, damage, costs, expenses and attorneys fees suffered or incurred as a result of Subcontractor's breach of this Agreement by Subcontractor, or its agents or employees'. Subcontractor's duty to indemnify Contractor shall not be limited in any way by any limitation on the amount or type of damages, including economic damages for the cost of repair.

Subcontractor's duty to indemnify Contractor shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of Contractor or Contractor's agents or employees. Subcontractor's duty to indemnify Contractor for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) Contractor or Contractor's agents or employees and (b) Subcontractor or Subcontractor's agents or employees shall apply only to the extent of the negligence of Subcontractor or Subcontractor's agents or employees.

For purposes of this Indemnification only, Subcontractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this subcontract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under worker's compensation acts, disability benefits acts, or other employee benefits acts; provided Subcontractor's

waiver of immunity by the provisions of this paragraph extend only to claims against Subcontractor or Contractor, and does not include, or extend to, any claims by Subcontractor's employees directly against Subcontractor.

Subcontractor's duty to defend, indemnify and hold Contractor and Owner harmless shall include, as to all claims, demands, losses and liability to which it applies, including but not limited to Contractor's personnel-related cost, reasonable attorneys' fees, court costs and all other claim-related expenses, including attorneys' fees and other costs incurred by Contractor to enforce and establish its rights under this indemnity agreement.

It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under this Section 8, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

In the event the Indemnified Parties have to take action to enforce their rights under the indemnification provisions of this Section, the Indemnified Parties shall be entitled to recovery of attorneys' fees and costs and all other expenses incurred in defending or pursuing that remedy from the Subcontractor.

The acceptance by Contractor of any certification of insurance to be provided by Subcontractor in this Agreement shall in no event be deemed a waiver of any of the provisions of these indemnity obligations. The indemnities set forth in this Section shall not be limited by the insurance requirements set forth herein.

The indemnity obligations herein shall survive the termination of this agreement for any reason and shall survive both Subcontractor's and Contractor's completion of their work on the Project. In all instances, this indemnity obligation shall survive irrespective of whether Subcontractor's insurance coverage as required by this agreement has been maintained, changed, cancelled, or otherwise terminated since the termination of this agreement or since Subcontractor's or Contractor's completion of their work.

It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under this Section 8, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

THE UNDERSIGNED HEREBY CERTIFY THAT THIS INDEMNITY CLAUSE AND WAIVER OF IMMUNITY UNDER TITLE 51 RCW WAS MUTUALLY NEGOTIATED.*

Dated:	_____	Dated:	_____
Contractor	<u>Panattoni Construction, Inc.</u>	Subcontractor:	_____
By:	_____	By:	_____
Title:	_____	Title:	_____

9. Insurance: Certificates of Insurance in compliance with this Section or otherwise acceptable to Contractor will be furnished to Contractor prior to commencement of any work on the project. Subcontractor shall, at its sole cost and expense, procure and maintain the following insurance covering Subcontractor's Work and obligations under this Agreement on all of its operations with companies acceptable to Contractor for the life of the Agreement, or such additional time as required by Federal or State law or the terms of Subcontract Documents, whichever is longer ("Required Insurance Period"):

- .1 Workers' Compensation as required by law and Employers Liability:
 - a. Bodily injury by accident: \$1,000,000 each accident
 - b. Bodily injury by disease: \$1,000,000 each employee
 - c. Bodily injury by disease: \$1,000,000 policy limit
 - d. If leased employees are used, issuance of an Alternate Employer's Endorsement.
- .2 Commercial General Liability: \$1,000,000 per occurrence with a maximum deductible or Self Insured Retention of \$25,000 or as approved by Contractor, \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate including products/completed operations for the duration of the Required Insurance Period and,

- a. Additional Insureds: Contractor, Owner, and their respective officers, directors, employees, parents, subsidiaries and affiliated companies, successors and assigns, and other entities as may be reasonably requested, shall be named as additional insureds under these policies, whether during the performance of the Work or any time thereafter, that may in any respect be applicable to matters, claims or suits arising out of or related to this Agreement;

(The CG2010/1185 form or its equivalent meets this requirement. We require coverage for liability arising from “your work” or “your operations”. “Your ongoing operations” language alone is not acceptable.)

We will also accept a Blanket Additional Insured Endorsement providing coverage to Contractor and the Owner, their officers, directors and employees that meets the coverage requirements listed herein, however such endorsements must include products/completed operations coverage.

- b. Primary and Non-contributory: Such insurance afforded by the policy for the benefit of the additional insureds shall be primary to Contractor’s and/or Owner’s interest and any insurance or self-insurance maintained by Contractor, Owner or any other additional insureds, shall be excess and non-contributory to the insurance required of Subcontractor hereunder.
 - c. Waiver of subrogation for Owner and Contractor
 - d. If the Work involves exposure to explosion, collapse, or underground hazards, any exclusions relative to explosion, collapse or underground hazards must be removed.
 - e. Claims Made and/or Modified Occurrence forms are not acceptable.
- .3 Automobile Liability: Not less than \$1,000,000 combined single limit each accident covering, at minimum, all owned, scheduled, hired and non-owned automobiles. If Subcontractor or its subcontractors of any tier are required to haul hazardous materials in performance of the Work, Subcontractor and/or its subcontractors must carry Automobile Liability insurance with limits not less than \$1,000,000 covering such transportation and hauling of hazardous materials.
 - .4 Professional Liability: Design and Design/Build subcontractors, including subcontractors providing professional design or engineering services, are also required to procure and maintain professional liability insurance coverage, including contractual liability insurance, with a minimum limit of \$1,000,000 and a maximum deductible of \$25,000 or as approved by Contractor.
 - .5 Pollution Liability: If the Work required by Subcontractor or its subcontractors of any tier involves, in whole or in part, remediation or abatement of hazardous materials/substances or contaminants (as defined by applicable law, statutes, codes, regulations or ordinances), demolition or renovation that may involve materials containing hazardous materials/substances or contaminants, or if the Subcontractor’s primary business is providing demolition services, Subcontractor shall maintain Contractor’s Pollution Liability insurance of not less than \$2,000,000 per occurrence and name Panattoni Construction and Owner as additional insureds. This policy must include coverage for disposal at non-owned disposal sites.
 - .6 Excess or Umbrella: In addition to the above-stated insurance requirements, if the compensation under this Agreement exceeds \$1,000,000, Subcontractor agrees to procure and maintain excess or umbrella insurance on a follow form basis over General Liability, Automobile and Employers Liability, with a minimum limit of \$5,000,000.
 - .7 Installation Floater and Equipment Floater: In addition to the above-stated insurance requirements, Subcontractor shall insure at full replacement value all property, machinery and equipment required by the Work at all times and/or locations prior to installation into the Project. Subcontractor shall maintain at its sole cost and expense insurance to protect its own equipment, tools and materials against risk of loss with sufficient limits to cover the value of all of the equipment, tools and materials Subcontractor may use in performance of the Work. Subcontractor is solely responsible for any deductibles, self insured retentions or uninsured losses for any reason arising out of Subcontractor’s obligations of this Section.
 - .8 If Subcontractor’s Work requires it to perform operations within 50 feet of property, an easement or right of way owned by a railroad, Subcontractor shall ensure that its General Liability and other policies as applicable have been endorsed to remove any exclusion for such Work. Subcontractor shall provide to Contractor proof of coverage endorsement prior to commencement of any Work within such 50 feet of a railroad, and shall provide such endorsement at no additional cost to Contractor. Alternatively, Contractor may require Subcontractor to purchase a Railroad Protective Policy, which cost shall be subject to a change order as permitted under this Agreement only if such Railroad Protective Policy is required after execution of this Agreement. Subcontractor also agrees to be bound by the terms of any right of entry, license agreement or other agreement required by a railroad as a condition of performing the Work.

- .9 All carriers providing coverage under this Agreement must be approved by the regulatory agency in the state where the project is located and/or where the Work is being performed, and must have at least an A.M. Best rating "A-" and a Financial Size Category of "VIII" or better. Subcontractor waives any and all rights of subrogation against Contractor and Owner.
- .10 If the Subcontractor or its subcontractors use any owned, leased, or chartered aircraft (including helicopters) in the performance of their contract, they shall maintain aircraft liability insurance of not less than \$10,000,000 per occurrence including passenger liability.
- .11 Builders Risk: Except as modified by the Prime Contract, in the event of a claim against the builders risk policy for this Project and in which Subcontractor submits a claim for loss under the policy, Subcontractor shall be responsible for its proportionate share of the builders risk deductible applicable to a particular loss. Subcontractor's share of the deductible for each claim under this policy shall be computed on the following basis: the percentage of Subcontractor's claimed loss in a particular claim, as substantiated by documentation acceptable to the Contractor, in relation to the total value of the loss under the respective builders risk claim ("Percentage"). The Percentage shall then be applied to the applicable builders risk deductible and charged to Subcontractor. Subcontractor's share of the deductible shall be immediately payable to Contractor upon demand and may be withheld by Contractor from any amounts due, or that may be due thereafter, to Subcontractor under any agreement between Contractor and Subcontractor.
- .12 Policies shall have mandatory 30 day cancellation notice, except 10 day for non-payment.
- .13 If Contractor requires additional coverage, policies or limits than those specified herein or in the Prime Contract, upon Contractor's request Subcontractor shall procure such insurance coverage and limits at Contractor's cost.
- .14 Subcontractor shall cause each sub-subcontractor of any tier retained by Subcontractor to perform any portion of the Work to purchase, obtain and maintain the herein required insurance for the duration of the Work, prior to commencing any portion of the Work. Any such sub-subcontractor of any tier shall name Owner and Contractor as additional insureds on their respective policies. Prior to commencement of any portion of the Work by a sub-subcontractor of any tier, Subcontractor shall provide Contractor with copies of appropriate certificates of insurance and endorsements evidencing the required insurance for each sub-subcontractor. Subcontractor shall also obtain from each such subcontractor a written indemnification in form and substance equivalent to the indemnity set forth herein, except that such indemnity shall be from such sub-subcontractor for the benefit of Owner and Contractor.
- .15 No policy maintained by Subcontractor pursuant to these requirements shall contain any deductible or self-insured retention as to any additional insured. In any event, Subcontractor is solely responsible for any deductible or self-insured retention associated with any policy maintained by Subcontractor as set forth herein, including any deductibles or self-insured retentions that may apply to Contractor or Owner by nature of their being named as additional insureds.
- .16 Subcontractor's policies shall not contain any exclusionary language or limitations that are applicable to any additional insured that are not applicable to the named insured.
- .17 If Subcontractor fails to procure or maintain any required insurance, Contractor shall have the right, but not the obligation, to secure such insurance in the name of and for the account of Subcontractor. In this event, Contractor shall have the right to back-charge Subcontractor for the cost of procuring such insurance out of any monies otherwise due Subcontractor, including any retention.
- .18 Contractor's acceptance of Subcontractor's compliance with the insurance provisions herein shall not in any way limit, alter or release Subcontractor from its duties, liabilities and responsibilities contained in the Agreement.
- .19 To the fullest extent permitted by law, if Subcontractor is out of business or otherwise unavailable at the time a Claim is presented to Contractor involving this Agreement, Subcontractor hereby assigns to Contractor all of its right, title and interest (but not any liabilities or obligations) under any applicable policies of insurance. This provision shall not apply to those policies where there is an express prohibition against assignment.

10. Payments to Subcontractor; Liens: Payment Applications for monthly progress payments, including all supporting documentation required by the Subcontract Documents, are due from the Subcontractor no later than the 25th of each month. The Contractor shall pay or cause to be paid to the Subcontractor progress payments of _____ % of the approved value of the Work which has been completed and for which payment has been made by Owner to Contractor. The remaining _____ % shall be retained by Contractor for not less than thirty-five days after the entire work required by the Prime Contract has been fully completed in conformity with the Subcontract Documents and has been delivered and accepted by Owner and Contractor, and until Contractor has received final payment from Owner. Contractor, in its sole discretion, may advance this payment schedule for any or all payments to Subcontractor if it chooses to do so, however Contractor is under no obligation to do so. Any advancement of the payment schedule to Subcontractor shall not waive, modify or limit any of Contractor's rights under this Agreement regarding any subsequent progress payments to Subcontractor. Any payment applications by Subcontractor and payments by Contractor

under this Agreement shall be subject to adjustment and final audit. Subcontractor shall immediately reimburse Contractor in the event of any overpayment.

If Owner or any other person responsible for providing construction funds delays in making payment to Contractor from which payment to Subcontractor is to be made, Contractor shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined according to the relevant circumstances, but in no event shall be less than the time Contractor and Subcontractor require to pursue to conclusion their legal remedies against Owner and/or any other person responsible for providing construction funds to obtain payment, including but not limited to mechanic's lien remedies.

Subcontractor shall furnish to the Contractor, lien releases from laborers, sub-subcontractors of any tier (sub-subcontractors), material suppliers, or any other party furnishing items, Work or services under or related to this Agreement in a form acceptable to Contractor and/or Owner with the attached Application for Payment form and shall provide all other documentation required by the Prime Contract, and it is agreed that no payment hereunder shall be made to Subcontractor, except at Contractor's sole option, until and unless such releases and documentation are furnished. Retention billings must be accompanied by all unconditional releases upon final payment for suppliers, and conditional releases from Subcontractor and its subcontractors and consultants. Contractor, in its sole discretion, reserves the right to pay Subcontractor, its sub-subcontractors of any tier, suppliers, vendors, labor or any other party having a lien right or other claim under this Agreement or the related to the Work by joint check. All payments to the Subcontractor are subject to further conditions shown in this Agreement.

Within ten (10) days after written demand from Contractor, Subcontractor shall cause the effect of any suit, stop notice or lien to be removed from the Project. If Subcontractor fails to do so, Contractor may use whatever means it deems appropriate to cause the suit, stop notice or lien to be removed or dismissed. Any and all resulting cost and expense, including Contractor's reasonable attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such suit, stop notice or lien provided Subcontractor first causes its effect to be removed from the Project and does such other things as may be necessary to cause Owner not to withhold any monies due to Contractor by reason of such suits, stop notice or lien.

11. Royalties, Patents and Copyrights: Subcontractor shall provide a statement identifying all patented or copyrighted materials, methods or systems incorporated in the Work that are likely to require the payment of royalties or license fees. The Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems incorporated in the Work. Subcontractor shall defend, indemnify and hold the Indemnified Parties harmless from all suits, actions or claims for any alleged violation or infringement of any patent rights, trademarks or copyrights arising out of the Work, including attorneys' fees that the Indemnified Parties may incur in defending or adjusting any such suit, action or claim.

12. Contractor's Right to Offset: The Contractor reserves the right to retain out of any monies due or to become due to the Subcontractor under this or any other agreement, an amount sufficient to indemnify, protect and hold harmless the Contractor or Owner against loss and damages by reason of lien or any other claim or allegation, including the reasonable likelihood of a claim or allegations, in whole or in part arising out of or related to Subcontractor's Work, including reasonable costs of litigation, attorneys' fees, and liquidated damages pursuant to Section 6, if the Contractor or Owner might be held directly or indirectly liable for any part of such lien, claim or allegation until such liability or alleged liability for loss and damages shall cease to exist. As used in this Section 12, claims and allegations against Subcontractor shall include, but not be limited to, Contractor's reasonable belief and evidence that the Work is not in conformance with the Subcontract Documents, nonconforming Work or a portion thereof not immediately remedied, failure to comply with the Schedule as adjusted in conformance with the terms herein, reasonable evidence that the Work cannot be completed for the Subcontract Amount, reasonable evidence that Contractor may incur liquidated damages by Owner arising in whole or in part due to Subcontractor's breach of any term of this Agreement, reasonable evidence that Subcontractor has failed or may fail to properly pay for labor, materials, equipment or supplies furnished in connection with the Subcontract, or any actual or reasonable likelihood of breach by Subcontractor of any term or condition of this Agreement or the Subcontract Documents. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be made for amounts previously withheld. Nothing in this Section shall be construed to limit or modify any other rights Contractor may have in this Agreement.

13. Changes to the Scope of Work & Claims: The Contractor may, at any time after the execution of this Agreement, without invalidating this Agreement or any bonds, if any, or security furnished hereunder, and without notice to the sureties, add to, reduce or change Subcontractor's scope of work in whole or in part for any reason. All such changes shall be authorized by written change order(s) issued by Contractor. Reductions in scope shall be given in writing to Subcontractor not later than five (5) business days prior to when the Work that has been reduced was scheduled to begin. Subcontractor is not entitled to compensation or damage for any loss or additional expenses, including loss of profit or overhead relating to reduced or omitted work.

- .1 All claims for additional compensation or an extension of time for performance must be given to Contractor in writing within 5 business days after Subcontractor recognizes the condition or event giving rise to the claim. Except in an emergency, notice shall be given before proceeding with the Work. If Contractor refuses to grant the requested compensation or time, Subcontractor shall perform the work and shall submit a complete and specific claim for additional compensation or an

extension of time for performance, including supporting documentation, to Contractor within fourteen (14) days after such work is performed. Subcontractor's failure to give Contractor timely written notice of a claim for additional compensation or an extension of time for performance prior to undertaking such work, or Subcontractor's failure to timely submit a complete and specific claim for additional compensation or an extension of time for performance, shall be deemed a waiver and abandonment of any such claim.

- .2 If causes beyond the Subcontractor's control delay the progress of the Work, then the Schedule and the Subcontractor's compensation shall be modified by Change Order as appropriate. Such causes shall be limited to: changes in the Work ordered by Owner or Contractor excluding suspension or termination as provided in this Agreement, acts or omissions of the Owner or others for whom the Owner is responsible excluding suspension or termination as provided in this Agreement, and Hazardous Materials or differing site conditions not reasonably anticipated. Causes beyond the control of the Subcontractor do not include acts or omissions on the part of its sub-subcontractors, materialmen, suppliers, consultants, agents or others for whom the Subcontractor is responsible.
- .3 To the extent a delay in the progress of the Work is caused by adverse weather conditions not reasonably anticipated, fire, unusual transportation delays, general labor disputes impacting the Project but not specifically related to the Worksite, governmental agencies, or unavoidable accidents or circumstances, the Subcontractor shall only be entitled to its actual costs without fee and an extension of the Schedule.

To the extent that the Subcontractor is entitled to additional compensation under subsections .2 or .3 of this Section 13, such additional compensation shall be limited to the extent permitted under the terms of the Prime Contract.

- .4 In the event delays to the Project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.
- .5 No claim, dispute or controversy, including any claim for extra or changed work, shall interfere with the progress or performance of the Work. Subcontractor shall proceed with the Work as directed by Contractor, diligently prosecute the Work to completion, and then submit any dispute for resolution in accordance with the dispute resolution provisions of this Agreement. Failure to so proceed shall amount to a default under Section 16 of this Agreement.

Any and all changes under this Section shall only be made pursuant to a written Change Order issued by Contractor. Subcontractor's claims for additional compensation or an extension of time shall be limited to causes identified in this Section unless otherwise further limited by the Prime Contract, in which case the provisions of the Prime Contract shall take precedence. Subcontractor waives all claims for additional compensation and/or an extension of time if Subcontractor fails to strictly comply with any term of this Section, and any costs incurred by Subcontractor shall be at Subcontractor's sole risk and cost.

14. Suspension by Owner: Should the Owner suspend the Work or any part of the Work and such suspension is not due to any act or omission of the Contractor, the Contractor shall notify the Subcontractor in writing and upon receiving notification, the Subcontractor shall immediately suspend the Subcontract Work. In the event of Owner suspension, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery in relation to the Subcontractor's Work, if any, under the terms of the Prime Contract with the Owner, but in no event shall Contractor's liability to Subcontractor exceed the actual value of Work performed up to the date of the suspension less all amounts previously paid to Subcontractor by Contractor.

15. Suspension by Contractor: The Contractor may order the Subcontractor in writing to suspend all or any part of the Work for such period of time as may be determined to be appropriate for the convenience of the Contractor. Phased work, interruptions of the Work for short periods of time and seasonal interruptions shall not be considered a suspension. The Schedule shall be adjusted by Change Order for any increase in the time of performance of this Agreement caused by such suspension. However Contractor shall only be responsible to pay Subcontractor for actual Work performed up to the date of the suspension less all amounts previously paid to Subcontractor by Contractor.

Neither the Subcontract Amount nor the Progress Schedule shall be adjusted for any suspension, to the extent that performance would have been suspended, due in whole or in part to the fault or negligence of the Subcontractor or by a cause for which Subcontractor would have been responsible. The Subcontract Amount shall not be adjusted for any suspension to the extent that performance would have been suspended by a cause for which the Subcontractor would have been entitled only to a time extension under this Agreement.

16. Notice of Default; Opportunity to Cure: If the Subcontractor refuses or fails to supply enough properly skilled workers, proper materials, or maintain the progress Schedule, or fails to make prompt payment to its workers, subcontractors or suppliers, or fails to comply with laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits, or in Contractor's reasonable determination may commit, a material breach of a provision of this Agreement, the Subcontractor shall be deemed in default of this Agreement. If the Subcontractor fails within 48 hours after written notification (Notice) to commence and continue satisfactory correction of the default with diligence and promptness, then the Contractor

without prejudice to any other rights or remedies, shall have the right, but not the duty, to implement any or all of the following remedies:

- .1 supply workers, materials, equipment and facilities as the Contractor deems necessary for the completion of the Subcontract Work or any part which the Subcontractor has failed to complete or perform after written notification, and charge the cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to the Subcontractor;
- .2 contract with one or more additional contractors to perform such part of the Subcontract Work as the Contractor determines will provide the most expeditious completion of the Work, and charge the cost to the Subcontractor as provided under Section 16.1; and/or
- .3 withhold any payments due or to become due under any Agreement with the Subcontractor pending corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of the Contractor.

In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice, but the Contractor shall give the Subcontractor notice promptly after the fact as a precondition of cost recovery.

17. Termination for Cause: If the Subcontractor fails to commence and/or satisfactorily continue correction of a default after expiration of the applicable Notice issued under Section 16, then the Contractor may, at its sole discretion, issue a written notice of termination to the Subcontractor, at which time this Agreement is terminated. Upon Subcontractor's receipt of the notice of termination, Subcontractor shall vacate the Project Site and Contractor shall be entitled to retain and use all of Subcontractor's materials, implements, equipment, appliances or tools furnished by, or belonging to the Subcontractor and located at the Project site for the purpose of completing any remaining Subcontract Work. The Contractor may furnish those materials, equipment and/or employ such workers or subcontractors as the Contractor deems necessary to maintain the orderly progress of the Work. All costs incurred by the Contractor in performing the Subcontract Work, including reasonable overhead, profit and attorneys' fees, costs and expenses, shall be deducted from any moneys due or to become due the Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Agreement Amount, and shall pay such amount to Contractor immediately upon demand. At the Subcontractor's request, the Contractor shall provide a detailed accounting of the costs to finish the Subcontract Work. Subcontractor shall also immediately endeavor to cancel all existing orders and contracts on terms satisfactory to Contractor, or at Contractor's option, assign such orders and contracts to Contractor. Subcontractor shall include in its agreements with subcontractors, materialmen, suppliers and vendors appropriate provisions necessary to effectuate such assignment to Contractor. If Contractor terminates this Agreement pursuant to this Section 17, Subcontractor shall have no further claims against Contractor by reason of this Agreement. If Contractor terminates this Agreement for Cause under this Section and it is later determined that the default termination was wrongful, such default termination automatically shall be converted to and treated as a Termination for Convenience under Section 18. In such event, Subcontractor shall be entitled to receive only the amounts payable under Section 18 for a termination for convenience and Subcontractor specifically waives any claim for any other amounts or damages, including without limitation any claim for consequential or indirect damages.

18. Termination for Convenience: Should the Owner terminate its contract with the Contractor or any part which includes the Work, or if Contractor chooses, in its sole discretion, to terminate this Agreement or any part which includes the Work for any reason, without limitation, the Contractor shall notify the Subcontractor in writing of the termination. This Agreement shall be terminated upon Subcontractor's receipt of the written notice of termination for convenience and the Subcontractor shall immediately stop the Work, follow all of Contractor's instructions, and mitigate all costs. Subcontractor shall also immediately endeavor to cancel all existing orders and contracts on terms satisfactory to Contractor, or at Contractor's option, assign such orders and contracts to Contractor. Subcontractor shall include in its agreements with subcontractors, materialmen, suppliers and vendors appropriate provisions necessary to effectuate such assignment to Contractor. In the event of Owner termination of the Prime Contract, the Contractor's liability to the Subcontractor, if any, shall be limited to the extent of the Contractor's recovery in relation to the Subcontractor's Work under the Prime Contract. However, if Contractor receives additional compensation or damages from Owner on account of such termination of the Prime Contract, Subcontractor shall be entitled to receive from Contractor that part of the additional compensation or damages which is equitable under the circumstances. This provision shall not require Contractor to make any claim against Owner for additional compensation or damages in the event of suspension or termination, and failure of Contractor to prosecute such a claim against Owner shall not entitle Subcontractor to any claim for additional compensation or damages against Contractor or Owner. In the event of Contractor terminates this Agreement without Owner termination of Prime Contract, such termination shall proceed according to the terms above, however the Contractor shall only be liable for payment to Subcontractor for Work performed up to the date of termination hereunder, including overhead and profit on Work so performed and reasonable direct costs of terminating this Agreement. Subcontractor shall not be entitled to any further claim or lien against Contractor, Owner or the Project for any additional compensation or damages in the event of termination for convenience and payment in accordance with this Section.

19. Green Building/LEED: If this Project and/or the Subcontract Documents require certification by the United States Green Building Council or a similar organization (e.g. LEED Certified, Silver, Gold or Platinum, or as otherwise or similarly designated), Subcontractor agrees to strictly comply with all processes, procedures, requirements, duties and obligations necessary to obtain the identified LEED or Green Building goal to the extent required or in relation to the Work under the Subcontract Documents. This obligation shall include, by way of example but not limitation, compliance with all documentary requirements of the certifying organization and job site protocols prior to and during execution of the Work and after completion of the Work.

20. Dispute Resolution

- .1 Initial Dispute Resolution: If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions with the principals. If the dispute cannot be resolved through direct discussions, the parties shall participate in mediation with a mutually acceptable mediator before recourse to any other form of binding dispute resolution. The location of the mediation shall be the location of the Project. Once a party files a request for mediation with the other party and with the American Arbitration Association, the parties agree to commence such mediation within thirty (30) days of filing of the request. Engaging in mediation is a condition precedent to any other form of binding dispute resolution.
- .2 Work Continuation and Payment: Unless otherwise agreed in writing, the Subcontractor shall continue the Subcontract Work and maintain the Progress Schedule during any dispute resolution proceedings. If the Subcontractor continues to perform, the Contractor shall continue to make payments for all undisputed work in accordance with this Agreement.
- .3 No limitation of Rights or Remedies: Nothing in this Article shall limit any rights or remedies not expressly waived by the Subcontractor which the Subcontractor may have under lien laws or payment bonds.
- .4 Multiparty Proceeding: The parties agree that to the extent permitted by Subcontract Document all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. To the extent disputes between the Contractor and Subcontractor involve in whole or in part disputes between the Contractor and the Owner, disputes between the Subcontractor and the Contractor shall be decided by the same tribunal and in the same forum as disputes between the Contractor and the Owner.
- .5 Disputes Between Contractor and Subcontractor: In the event that the provisions for resolution of disputes between the Contractor and the Owner contained in the Prime Contract do not permit consolidation or joinder with disputes of third parties, such as the Subcontractor, resolution of disputes between the Subcontractor and the Contractor involving in whole or in part disputes between the Contractor and the Owner shall be stayed pending conclusion of any dispute resolution proceeding between the Contractor and the Owner. At the conclusion of those proceedings, disputes between the Subcontractor and the Contractor shall be submitted again to mediation pursuant to Section 20.1. Any disputes not resolved by mediation shall be decided in the manner selected in the agreement between the Owner and the Contractor.
- .6 Cost of Dispute Resolution: The cost of any mediation proceeding shall be shared equally by the parties participating. The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by a dispute resolution procedure designated in the Subcontract Documents shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such dispute resolution process.

Contractor: _____

Subcontractor: _____

21. Clean and Orderly Premises: During the course of construction, the Subcontractor shall remove his waste materials and maintain the premises at all times in a safe, clean, and orderly condition. Upon completion of the work under this Agreement, the Subcontractor shall remove from the site all temporary structures and debris incident to his operation. If Subcontractor fails to clean up within two business days after written notification by the Contractor to do so, the Contractor may proceed with that function as he deems necessary and in the manner he may deem expedient, and will deduct the cost thereof from monies due under this Agreement. Subcontractor shall comply with the job site rules and policies of Contractor.

22. Safety: The Subcontractor shall perform the Work in a safe and reasonable manner and shall at all times comply with the terms and conditions of Exhibit A: Safety MPS, as it may be modified from time to time, and all applicable laws and regulations. To the extent that any term, condition, duty or requirement in this Section conflicts with any terms, conditions, duties or requirements of the Safety MPS or any other Contract Document, the terms, conditions, duties and requirements providing the greatest protection to the Owner, Contractor, Work and/or Project shall take precedence and apply.

23. Effect of Payment: No payment made under this Agreement, except the final payment, shall be conclusive evidence of performance of this Agreement, either in whole or in part, and no payment shall be construed to be an acceptance by Contractor or Owner of defective or deficient work or improper materials. In case of loss or destruction of said Work by fire, earthquake, or any other cause, and in the event that the Contractor is paid any money as payment for such loss or destruction, the Contractor shall pay a just share to the Subcontractor. Any riders or special conditions attached hereto shall become a part of this Agreement upon the signature of both parties being affixed thereto.

24. Bonds: With the execution of this Agreement, Subcontractor represents that it is bondable and shall, if required by Contractor and at Contractor's expense, obtain a Labor and Material Bond and a Faithful Performance Bond in an amount

requested by Contractor. Said bonds shall be secured by a surety company acceptable to the Contractor. Subcontractor's inability to furnish any bonds requested by Contractor shall constitute a breach of the Agreement by Subcontractor entitling Contractor to terminate the Agreement pursuant to Sections 16 and 17.

25. Damage to Work in Place: In the event that Subcontractor's Work and/or Subcontractor, its agents or employees should, by act or omission, cause damage to ongoing work in place, finished work, and/or any other party's work in progress or finished work, Contractor, having notified Subcontractor in writing, shall have the right to charge Subcontractor with the reasonable cost of repair, remediation and/or restoration. At Contractor's option, Contractor may withhold sums due and owing to Subcontractor under this Agreement or any other agreement with Subcontractor or an affiliate of Subcontractor to pay the reasonable cost of said damages, including costs of investigation, testing, retention of experts/engineers, repair, remediation and/or restoration.

26. Title to Materials: Upon and after execution of this Agreement, all materials delivered to the construction jobsite and installed by Subcontractor and paid for by Contractor become and are property of the Owner, subject to Owner's duty to pay Contractor for such materials in accordance with this Agreement.

27. Warranty: Subcontractor shall guarantee its work against all defects of workmanship, materials and/or equipment to the greatest extent and duration called for in the plans, specifications, addenda, amendments, Prime Contract and any other Contract Document, but in no event less than one (1) year. The commencement date of Subcontractor's warranty(ies) shall be the earlier of the final building inspection or the Certificate of Occupancy. Without limiting the generality of the foregoing, the Subcontractor warrants to the Contractor and Owner that all materials and equipment furnished under this Agreement shall be new and of first class quality, unless otherwise permitted by the other Subcontract Documents and that the Work will be free of defects and will conform to the requirements of the Subcontract Documents. Subcontractor shall assign or cause to be assigned all warranties for equipment and products to the Owner as a condition of final payment. Subcontractor shall commence repairs of any warrantable work within 48 hours of written notice by Contractor, and said warranty repair work shall be executed diligently and expeditiously until completion of the warranty work. Except for warranties issued by equipment manufacturers, Subcontractor warrants any repair work for an additional warranty period equal to that of the original work, said additional warranty period to commence upon completion of the repair work. Subcontractor's warranty obligations shall be considered part of its ongoing operations.

28. Sub-Subcontractors (Lower Tier Subcontractors): Prior to commencement of any portion of the Work, Subcontractor shall identify to Contractor all sub-subcontractor(s) and material suppliers Subcontractor intends to use to perform any portion of the Work prior to executing the Agreement. If Subcontractor intends to sub-subcontract all or a portion of the Work, Subcontractor will only do so by written contract with any such sub-subcontractor or material supplier of any tier. Any such written contract between Subcontractor and any sub-subcontractor or material supplier of any tier (i.e. sub-subcontract) for any portion of the Work shall contain and incorporate terms and conditions requiring and incorporating at minimum each and every term, condition, right, obligation and duty as contained in this Agreement or the Prime Contract, if applicable, and applicable to Subcontractor. Subcontractor shall ensure that such agreements with sub-subcontractors and suppliers do not contain any limitations on Contractor's rights under this Agreement, including, for example, the assignment of such agreements to Contractor as provided herein. Contractor reserves the absolute right to object to or reject Subcontractor's use of a particular sub-subcontractor or material supplier upon reasonable basis, upon which objection Subcontractor shall not contract with any such rejected sub-subcontractor or material supplier. However, any such objection or rejection shall not in any way limit, reduce or void this Agreement or Subcontractor's performance of the Work as specified in the Subcontract Documents.

29. Owner – Contractor Agreement (Prime Contract): With respect to the Work to be performed and furnished by the Subcontractor, Subcontractor agrees to comply with and be bound to Contractor by the obligations, duties, terms, conditions, and responsibilities in the Prime Contract as if incorporated herein in full, and Contractor shall have the same rights and remedies against Subcontractor as Owner has towards Contractor as set forth in the Prime Contract as if each such right, remedy, term and provision were set forth in full herein. Where in the Subcontract Documents reference is made to Contractor and the provision pertains to Subcontractor's trade, craft or type of work, then such provision shall be interpreted to apply to Subcontractor instead of Contractor. The Prime Contract is a Contract Document and has been made available to Subcontractor for its review and evaluation prior to execution of the Subcontract Documents. Subcontractor hereby waives any claims against Contractor or Owner that the Prime Contract was not made available to Subcontractor prior to execution of the Agreement, any Addenda or the Subcontract Documents.

30. Severability: Should any provision of the Agreement at any time during its term be in conflict with any Federal or State law or any ruling or regulation of a Federal or State agency, then such provision shall continue in effect only to the extent permitted. In the event any provision of this Agreement is thus held inoperative, the remaining provisions of this Agreement shall, nevertheless, remain in full force and effect.

31. Merger and Integration: This Agreement and the documents comprising the Subcontract Documents contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understanding with respect thereto. This agreement may only be amended by a written document duly executed by Contractor and Subcontractor.

32. Choice of Law: This Agreement shall be interpreted under the laws of the State where the project is located.

33. Non-waiver: The failure by one party to require performance of any provision in this Agreement shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

34. Right to Audit: Subcontractor shall keep, and require each of its sub-subcontractors, if any, to keep, in conformance with the terms herein, such full and detailed accounts as are necessary for proper financial management under this Agreement. Contractor and the Owner, to the extent allowed in Prime Contract, shall be afforded access to all the Subcontractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. Subcontractor shall preserve all such records for a period of three years after the final payment or longer where required by law.

35. Confidentiality: To the extent the Prime Contract provides for the confidentiality of any of the Owner's proprietary or otherwise confidential information disclosed in connection with the performance of this Agreement or if the Owner requires the parties to execute a Confidentiality Agreement, the Subcontractor agrees to be equally bound by the Owner's confidentiality requirements and execute any agreements required by the Owner to that effect. Additionally, Subcontractor agrees to hold confidential the terms of this Agreement, the Subcontract Documents, and any other documents identified by Contractor as Confidential, however Subcontractor shall not be responsible to hold documents or information confidential that is public knowledge, was previously released by Contractor prior to execution of this Agreement or which must be disclosed pursuant to the law or in furtherance of legal proceedings related to this Agreement. Additionally, Subcontractor shall only disclose to parties necessary to perform the Work information, confidential or otherwise, only to the extent necessary to perform the Work.

36. Contingent Assignment of Subcontract: If the Prime Contract has a provision requiring the contingent assignment of this Agreement to the Owner, such assignment is effective when the Owner has terminated the Prime Contract for cause and has accepted the assignment by notifying the Subcontractor in writing. This contingent assignment is subject to the prior rights of a surety that may be obligated under the Contractor's bond, if any. Subcontractor consents to such assignment and agrees to be bound to the assignee by the terms of this Agreement, provided that the assignee fulfills the obligations of the Contractor.

Similarly, if the Project lender or other entity providing financial resources for the Project requires as a condition of funding that this Agreement be assigned to the Project lender or other entity providing financial resources for the Project upon default of the Owner under the lending or financial agreement, Subcontractor consents to such assignment and agrees to be bound to the assignee by the terms of this Agreement, provided that the assignee fulfills the obligations of the Owner.

37. Notices: Written notice, as required in this Agreement, is deemed duly provided by the party providing written notice if delivered in person to the individual or an employee of the firm or entity or to an officer of the Corporation for which it was intended, or if delivered at or sent by registered, certified or overnight mail with return receipt or proof of recipient's receipt to the last business address known to the party giving notice.

38. Miscellaneous: The titles given to the Sections and Paragraphs of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. Contractor and Subcontractor expressly agree that this Agreement was jointly drafted, and that they both had an opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

Contractors may be required by law to be licensed and regulated by the Contractor's State License Board or other applicable licensing agency/department and must adhere to the local agencies licensing provisions in the City and/or County where Work is performed.

In Witness Whereof, the parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assigns on the day and year first above written.

**CONTRACTOR: Panattoni Construction,
Inc., a California
Corporation**

SUBCONTRACTOR:

BY: _____ Date _____
:

BY: _____ Date: _____
Name _____

California License #759899

Print Name & Title

Corporation Partnership Proprietorship

State License # _____

Expires: _____

City License # _____

Expires: _____

County License # _____

Expires: _____