

CONSTRUCTION SUBCONTRACT –

Highway 212 Reconstruction - Watertown, South Dakota

This is a Construction Subcontract (Subcontract) between **J&J Earth Works, Inc.** (Contractor) and **Timmons Construction Inc.** (Subcontractor). This Subcontract is effective as of **February 18, 2022**.

Prime Contract: Contractor was awarded a contract (Prime Contract) dated **December 16, 2021** with the **State of South Dakota** (Owner). The **South Dakota Department of Transportation (SDDOT)** is the Engineer for the project.

Contractor and Subcontractor further agree as follows:

ARTICLE 1—PRELIMINARY MATTERS

1.01 Prime Contract

- A. The Prime Contract requires Contractor to perform and furnish construction labor, materials, equipment, and services ("Prime Contract Work") in connection with the Project described therein. The Prime Contract (excluding compensation and other confidential information) is incorporated in this Subcontract by reference. Portions of the Prime Contract are available upon request. The Project described in the Prime Contract is summarized as follows:

Highway 212 Reconstruction – Urban Grading, PCC Surfing, Curb and Gutter, Sidewalk, Lighting PCN 027D Project# NH 0212(174)377 – Generally described as street reconstruction, including widening of roadway, sanitary sewer collection and water distribution systems reconstruction, installation of Curb, Gutter, and Sidewalk, installation of lighting and all associated electrical work, and PCC and asphalt surfacing.

1.02 Scope of Subcontract Work

- A. Contractor hereby retains Subcontractor to provide construction labor, materials, equipment, and services under this Subcontract described as follows:

Provide all cement concrete pavement, including but not limited to, curb and gutter, approach pavement, driveway pavement, fillet sections, ADA ramps, and sidewalks. All work will be in accordance with the plans and specifications for the project. ("Subcontract Work").

- B. The Subcontract Work is a part of the Prime Contract Work. Except as otherwise stated in this Subcontract, the provisions of the Prime Contract that apply to the performance and quality of the Prime Contract Work apply to the Subcontract Work.
- C. The express terms of this Paragraph 1.02 govern in establishing the Subcontract scope of work. The divisions and sections of the Prime Contract's Specifications and the identifications and organization of the Prime Contract's drawings do not control or limit Contractor in dividing the Work among subcontractors or suppliers, or delineating the work to be performed by, or obligations of any specific trade, including Subcontractor.

1.03 Subcontract Documents

- A. The Subcontract Documents are identified in Article 14 of this Subcontract.

1.04 *Independent Contractor*

- A. Subcontractor is an independent contractor, and is not an employee or partner of, or a joint-venturer with Contractor, and has no contractual relationship or privity with Owner or Owner's engineers or consultants.

ARTICLE 2—OBLIGATIONS OF THE PRIME CONTRACT

2.01 *Incorporation of Prime Contract Obligations*

- A. The Subcontractor is bound to the Contractor under the Subcontract to the same extent that the Contractor is bound to the Owner under the Prime Contract, and Subcontractor shall comply with all requirements, terms, and conditions of the Prime Contract that relate in any way to the performance and completion of the Subcontract Work.
- B. The obligation of the Subcontractor to comply with the requirements, terms, and conditions of the Prime Contract does not provide any rights, benefits, or third-party beneficiary standing to the Subcontractor with respect to the Prime Contract.

2.02 *Precedence of Subcontract*

- A. If a provision of this Subcontract conflicts with a provision of the Prime Contract, the terms of this Subcontract govern, unless under controlling laws the conflicted provision of the Prime Contract cannot be waived.

ARTICLE 3—SUBCONTRACT TIMES

3.01 *Subcontract Times.*

- A. The Subcontract Work will be completed in full:
 1. Field Work - on or before **October 28, 2022** on all scheduled work, unless noted otherwise.
- B. Subcontractor shall provide all required submittals on a timely basis, and shall provide sufficient labor and materials to comply with the Contractor's progress schedule and avoid delaying the progress of Contractor's work under the Prime Contract. Subcontractor shall make modifications in the performance and completion of the Subcontract Work as necessary to comply with modifications, if any, in the Contractor's progress schedule.
- C. The time for completion of the Subcontract Work, as set forth in Paragraph 3.01.A, and compliance with the Contractor's progress schedule, as set forth in Paragraph 3.01.B, all as duly modified under this Subcontract, together will be referred to as "Subcontract Times."

3.02 *Time of the Essence*

- A. Subcontractor's obligation to comply with the Subcontract Times is of the essence of the Subcontract.

3.03 *Damages for Late Completion*

- A. Subcontractor and Contractor recognize that Contractor will suffer financial loss if the Subcontract Work is not completed within the Subcontract Times.
- B. The damages resulting to the Contractor may include liquidated damages, special damages, and other damages (if any) assessed by the Owner, actual damages claimed by the Owner as

a result of the delay, and the Contractor's costs for extended general conditions, field overhead, and home office overhead.

- C. As a result of the losses, costs, and damages recognized in Paragraphs 3.03.A. and B., if Subcontractor fails to complete the Subcontract Work within the Subcontract Times, and without limiting any additional remedies available to Contractor, Subcontractor shall pay Contractor for losses, costs, and damages incurred by Contractor for Subcontractor's failure to comply with the Subcontract Times, including the share attributable to Subcontractor of delay damages and costs imposed on or levied against Contractor. Contractor has the right to set off any such amounts against payments due Subcontractor under this Subcontract.

ARTICLE 4—SUBCONTRACT PRICE

4.01 Payment Obligation

- A. Contractor shall pay Subcontractor for completion of the Subcontract Work in accordance with the Subcontract Documents an amount equal to the sum of the amounts determined pursuant to the following paragraphs (Subcontract Price).
- B. For all Subcontract Work other than Unit Price Work, a lump sum of: \$NA
1. Cash Allowances: All specific cash allowances are included in the above price and include the cost to Subcontractor (less any applicable trade discounts) of materials and equipment required by the cash allowances to be delivered at the site, and all applicable taxes. Subcontractor's costs for unloading and handling on the site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Subcontract Price, and no demand for additional payment on account of any of the foregoing will be valid.

C. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work multiplied by the actual quantity of that item:

Unit Price Subcontract Work*					
Item No.	Description	Estimated Quantity**	Unit	Unit Price	Extended Price
9.00E+10	Mobilization	1	LS	\$225,000.00	\$225,000.00
380e3520	6" PCC Approach Pavement	1255.8	SqYd	\$58.80	\$73,841.04
380e3525	6" Reinforced PCC Approach Pavement	14.6	SqYd	\$70.10	\$1,023.46
380e3540	8" PCC Approach Pavement	440	SqYd	\$65.65	\$28,886.00
380e3545	8" Reinforced PCC Approach Pavement	4.6	SqYd	\$76.90	\$353.74
380e4010	6" PCC Fillet Section	21.2	SqYd	\$100.00	\$2,120.00
380e4080	9.5" PCC Fillet Section	237.9	SqYd	\$112.50	\$26,763.75

Unit Price Subcontract Work*					
Item No.	Description	Estimated Quantity**	Unit	Unit Price	Extended Price
4.70E+122	Steel Pedestrian Railing on Sidewalk	70	Ft	\$175.00	\$12,250.00
5.30E+302	Type C Concrete Retaining Wall	1193	SqFt	\$37.50	\$44,737.50
6.50E+62	Type B66 Concrete Curb and Gutter	1487	Ft	\$19.25	\$28,624.75
6.50E+97	Type B69.5 Concrete Curb and Gutter	11131	Ft	\$22.50	\$250,447.50
650e0395	Type BL69.5 Concrete Curb and Gutter	106	Ft	\$23.00	\$2,438.00
650e1560	Type R48 Concrete Curb and Gutter	124	Ft	\$30.00	\$3,720.00
650e3060	Type B6 Concrete Curb	18	Ft	\$45.00	\$810.00
650e4660	Type P6 Concrete Gutter	134	Ft	\$19.00	\$2,546.00
650e4695	Type P9.5 Concrete Gutter	1262	Ft	\$22.50	\$28,395.00
6.51E+42	4" Concrete Sidewalk	2397	SqFt	\$5.40	\$12,943.80
6.51E+62	6" Concrete Sidewalk	47358	SqFt	\$6.10	\$288,883.80
6.51E+162	6" Reinforced Concrete Sidewalk	3662	SqFt	\$7.40	\$27,098.80
651e7000	Type 1 Detectable Warnings, includes plates	865	SqFt	\$54.50	\$47,142.50
670e1200	Type B Frame and Grate Assembly, install labor only	22	Each	\$75.00	\$1,650.00
670e2200	Type C Frame and Grate, install labor only	1	Each	\$75.00	\$75.00
670e5202	Special Frame and Grate, install labor only	4	Each	\$75.00	\$300.00
671e7010	Adjust Manhole, adjustment labor only	16	Each	\$55.00	\$880.00
900e5145	Bollard	3	Each	\$825.00	\$2,475.00

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Unit Price Subcontract Work*					
Item No.	Description	Estimated Quantity**	Unit	Unit Price	Extended Price
3.80E+82	9.5" Nonreinforced PCC Pavement	41842.3	SqYd	\$66.55	\$2,784,605.07
380e3020	6" PCC Driveway Pavement	379.2	SqYd	\$60.80	\$23,055.36
380e3040	8" PCC Driveway Pavement	262.9	SqYd	\$67.65	\$17,785.19
380e6000	Dowel Bar	24678	Each	\$12.75	\$314,644.50
380e6110	Insert Steel Bar in PCC Pavement	134	Each	\$20.00	\$2,680.00
Total of all Extended Prices (Unit Price Subcontract Work)					\$ 4,256,175.75

*Exhibit A (attached) displays actual quote and unit prices from Subcontractor. This includes all sales tax, but does not include excise tax, bonds, or dues.

**Actual quantities may vary based on in field determinations and findings.

The extended prices for Unit Price Work set forth as of the Subcontract Date are based on estimated quantities. Estimated quantities are not guaranteed, and determinations of actual quantities will be verified by the Contractor and will be subject to any applicable procedures for measurement and verification under the Prime Contract.

ARTICLE 5—PAYMENT PROCEDURES

5.01 Progress Payments

A. Applications for Payments

1. Ten days prior to the date established in the Prime Contract for submission by the Contractor of the Contractor's application for each progress payment (but not more often than once a month), Subcontractor shall submit to Contractor for review a draft progress payment application covering the Subcontract Work completed as of the date of the progress payment application. The amount requested under each progress payment application will be calculated in accordance with Article 4, and: (a) for lump sum work by determining the percentage of the Subcontract Work completed as of the date of the progress payment application; (b) for unit price work by applying unit prices to units provided; (c) subject to subtraction to account for amounts previously paid. Subcontractor's progress payments will be subject to the retainage provisions of the Prime Contract, or to retainage of ten (10) percent, whichever is greater.
2. Each Subcontractor progress payment application must be accompanied by supporting documentation required by the Prime Contract to be attached to the Contractor's progress payment submission. The Subcontract progress payment application must also be accompanied by required lien waivers; a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all liens; and for stored material and equipment, evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein. All such supporting documentation must be satisfactory to Contractor and Owner.

3. Beginning with Subcontractor's second progress payment application, each Subcontractor progress payment application must include a Subcontractor's affidavit stating that all previous progress payments received on account of the Subcontract Work have been paid to persons and entities providing labor, equipment, materials and services on account of amounts received on behalf of said sub-subcontractors, suppliers, and vendors from prior progress payment applications. Each Subcontractor's affidavit must list all sub-subcontractors, suppliers, and vendors having contracts with Subcontractor to provide said labor, equipment, material, and services on the Project including the amount of each contract, the amount paid to date and the amount due or to become due to each sub-subcontractor, supplier, and vendor. Each progress payment application must also include lien waivers executed by each sub-subcontractor, supplier, and vendor listed on the Subcontractor's affidavit.

B. Review of Applications

1. Within ten days after receipt of each draft progress payment application submitted by Subcontractor, Contractor will return the draft progress payment application with corrections (if any). Subcontractor will submit a final progress payment application, incorporating all resolved corrections, together with all supporting documentation, within three days thereafter.
2. Contractor may withhold amounts requested in one or more payment applications from the Subcontractor in whole or part if one or more of the following occurs:
 - a. The Subcontract Work is defective, or completed Subcontract Work has been damaged, requiring correction or replacement;
 - b. The Subcontract Price has been reduced by change orders;
 - c. The Contractor has been required to correct defective Subcontract Work or complete Subcontract Work;
 - d. Claims have been made against Contractor on account of Subcontractor's performance or furnishing of the Subcontract Work;
 - e. Liens have been filed in connection with the Subcontract Work, except where Subcontractor has delivered a specific bond satisfactory to Contractor and Owner to secure the satisfaction and discharge of such liens;
 - f. The Owner has exercised a set-off against payments to Contractor attributable to Subcontractor's activities or performance of the Subcontract Work; or
 - g. The Subcontractor has defaulted under the terms of the Subcontract.
- C. *Payment:* Contractor shall pay Subcontractor any amounts due to Subcontractor under a payment application for Subcontract Work within ten days after Contractor's receipt from the Owner of payment for such Subcontract Work.

ARTICLE 6—FINAL PAYMENT AND COMPLETION

6.01 Final Payment

- A. Upon final completion of obligations under the Subcontract, including acceptance by Owner (or its representative) of the Subcontract Work as part of the Work under the Prime Contract, and submission and acceptance of all close-out documents required under the

Subcontract, Subcontractor shall submit to Contractor an application for final payment and release of retainage, if any.

- B. Final payment becomes due **thirty (30)** days after completion of the project of amounts requested on behalf of Subcontractor. Contractor's receipt of payment of retainage withheld by Owner from amounts due to Contractor for the Subcontract Work is an express condition precedent to Contractor's obligation to pay such retainage to Subcontractor.

6.02 Final Lien Waivers

- A. Upon the request of Contractor, Subcontractor shall submit, as part of the application for final payment, a final waiver of lien and sworn statement indicating all sub-subcontractors, suppliers, and vendors, their contract amounts, and the final amounts paid to each sub-subcontractor, supplier, and vendor.

6.03 Warranty of Title

- A. Subcontractor warrants and guarantees that title to all Subcontract Work, materials, and equipment furnished under the Subcontract will pass to Owner free and clear of all liens and other title defects, and all patent, licensing, copyright, or royalty obligations.

6.04 Waiver of Claims

- A. Final payment by Contractor to Subcontractor constitutes:
1. A waiver of all claims by Contractor against Subcontractor, except claims arising from unsettled liens, from defective Subcontract Work appearing after final inspection, from failure to comply with the Subcontract Documents or the terms of any special guarantees specified therein, or from Subcontractor's continuing obligations under the Prime Contract; and
 2. A waiver of all claims by Subcontractor against Contractor other than those previously made in accordance with the requirements herein that remain unsettled.

ARTICLE 7—SUB-SUBCONTRACTORS

7.01 Subcontractor's Responsibility

- A. Subcontractor shall be fully responsible to Contractor for all acts and omissions of the sub-subcontractors, suppliers, and other individuals or entities performing or furnishing any of the Subcontract Work, just as Subcontractor is responsible for Subcontractor's own acts and omissions.

7.02 No Third-Party Relationships

- A. Nothing in the Subcontract Documents creates for the benefit of any such sub-subcontractor, supplier, or other individual or entity any contractual relationship between Contractor, Owner, or Owner's engineers or consultants and any such sub-subcontractor, supplier, or other individual or entity.
- B. Nothing in the Subcontract Documents creates any obligation on the part of Contractor, Owner, or Engineer to pay or to see to the payment of any money due any such sub-subcontractor, supplier, or other individual or entity, except as may otherwise be required by laws and regulations.

ARTICLE 8—PERFORMANCE OF THE SUBCONTRACT WORK

8.01 Subcontractor's Obligations

- A. Subcontractor shall provide all material, equipment, services, and labor necessary for the completion of the Subcontract Work.
- B. All materials and equipment must be as specified in the Subcontract Documents and be of good quality and new, except as otherwise provided in the Subcontract Documents. Subcontractor shall provide Contractor with such information and test results required under the Prime Contract to verify the quality of the materials and equipment furnished under the Subcontract Documents.
- C. Subcontractor shall provide notice of any potential overrun of estimated quantities to the Contractor. The Contractor must acknowledge and approve any potential overrun of estimated quantities prior to Work continuing by Subcontractor.
 1. Contractor will not be responsible for payment of any Work not approved prior to commencement of overruns by Subcontractor.
 2. Contractor shall not delay Work for reasonable adjustments to quantities during construction. Reasonable adjustments shall include any change or potential overrun/underrun equal to or less than two and one half percent (2.5%) of estimated quantities.

8.02 Verification of Existing Conditions

- A. The dimensions, locations, and limits of the Subcontract Work are shown or indicated in the Subcontract Documents.
- B. The Contractor has used reasonable efforts to verify the accuracy of dimensions, locations, and limits in the Subcontract Documents, but takes no responsibility for the verification of information concerning actual conditions affecting the Subcontract Work. Subcontractor has an independent obligation to verify actual conditions, including but not limited to dimensions, locations, and limits, prior to ordering equipment and materials and performing the Subcontract Work, and shall be responsible for all costs and expenses resulting from the failure to verify such information.

8.03 Supervision

- A. At all times during the progress of the Subcontract Work, Subcontractor shall assign an authorized representative to provide competent, on-site supervision. Such representative must not be replaced without written notice to Contractor except under extraordinary circumstances.
- B. Subcontractor shall be solely responsible for scheduling and coordinating the work of sub-subcontractors, suppliers, and other individuals or entities performing or furnishing any of the Subcontract Work under a direct or indirect contract with Subcontractor.
- C. Subcontractor shall supervise, inspect, and direct the Subcontract Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Subcontract Work in accordance with the Subcontract Documents.

8.04 Coordination with Other Subcontractors; Other Work at the Site

- A. Subcontractor shall cooperate with other subcontractors and coordinate its Subcontract Work and schedule with other subcontractors on the Project. Subcontractor shall attend coordination meetings and endeavor to resolve all conflicts with other subcontractors without the intervention of Contractor. If a conflict cannot be resolved without the intervention of Contractor, the decision of Contractor regarding resolution of the conflict will be final.
- B. Subcontractor shall not damage, delay, or interfere with the work of other subcontractors or of Contractor, Owner, or others working at the site, shall be responsible for the cost of damage, delay, or interference caused by the operations of Subcontractor to the work of others.

8.05 Prosecution of the Subcontract Work

- A. *Clean-up:* On not less than a daily basis, Subcontractor shall be responsible for cleaning up and removing all debris and waste resulting from the Subcontract Work, to avoid interference with the work and progress of others at the site. If Subcontractor fails to clean up and remove waste and debris in accordance with this provision, Contractor may provide for clean-up and removal of waste and debris at Subcontractor's expense.
- B. *Hoisting and Lifting:* Subcontractor shall provide all hoisting and lifting required for the Subcontract Work, unless Contractor has otherwise expressly agreed to provide hoisting, lifting, or both.
- C. *Temporary Utility Services and Temporary Facilities:* Subcontractor shall at its expense provide temporary utility services and temporary facilities needed for the performance of the Subcontract Work, except those temporary utility services and temporary facilities that Contractor has expressly agreed to provide at its expense.
- D. *Safety and Protection*
 1. Subcontractor shall perform the Subcontract Work in a safe manner, taking full responsibility for the prevention of harm or injury to its workforce, and taking all reasonable steps necessary to protect from harm, injury, or damage all persons, property, structures, materials, and equipment at or adjacent to the Subcontractor's work areas.
 2. Subcontractor shall comply with the safety programs of the Owner and Contractor, when Subcontractor has been made aware of such requirements in writing.
 3. Subcontractor shall coordinate the safety of its employees, Subcontractor's lower-tier subcontractors, and Subcontractor's suppliers with Contractor's safety representative, and shall comply with all applicable OSHA and other laws and regulations related to safety and protection. Subcontractor shall ensure that its employees and the on-site employees of Subcontractor's lower-tier subcontractors and suppliers are properly trained and understand (a) Owner's, Contractor's, and Subcontractor's safety requirements, and (b) applicable safety laws and regulations. Subcontractor is responsible for furnishing to Contractor and others as applicable all required material safety data sheets.
 4. Subcontractor shall report promptly to Contractor all injuries, accidents, and damage that occurs during the performance of the Subcontract Work, and all failures or near-

miss events that could have resulted in serious injury, even if no serious injury actually occurred.

- E. *Labor:* Subcontractor shall comply with applicable labor and jurisdictional requirements to prevent strikes and other work stoppages and slowdowns that would interfere with the Subcontract Work and the work of others. Subcontractor shall be responsible for delays resulting from Subcontractor's violation of this provision.
- F. *Communications with Owner and Engineer:* Subcontractor shall communicate with Owner, Owner's engineers, and Owner's other representatives solely through Contractor, with the following limited exceptions: (1) in the case of an emergency, Subcontractor may communicate directly with any entity or individual in the interests of safety and protection of property, (2) Subcontractor may directly request Owner to provide information about amounts paid to Contractor on account of Subcontract Work performed, and (3) Subcontractor may directly request Owner to provide Subcontractor with a copy of any payment bond furnished by Contractor.

8.06 Correction and Warranties

- A. Subcontractor warrants and guarantees to Contractor that all Subcontract Work will be in accordance with the Subcontract Documents and will not be defective. Subcontractor's warranty and guarantee hereunder excludes defects or damage caused by abuse, modification, or improper maintenance or operation by persons other than Subcontractor and its sub-subcontractors, suppliers, or any other individual or entity for whom Subcontractor is responsible; or normal wear and tear under normal usage.
- B. Subcontractor's obligation to perform and complete the Subcontract Work in accordance with the Subcontract Documents will be absolute and Subcontractor shall be fully responsible for the Subcontract Work under the Subcontract to the same extent that Contractor is responsible for the Subcontract Work to the Owner under the Prime Contract.
- C. Subcontractor shall correct the Subcontract Work to the same extent that Contractor is required to correct the Prime Contract Work (including the Subcontract Work) under the Prime Contract. Subcontractor shall correct Subcontract Work whether or not installed or completed. If the Subcontract Work has been rejected, Subcontractor shall remove such rejected Subcontract Work from the Project at the direction of Contractor, and replace it with Subcontract Work that is not defective.
- D. For a period of one year after substantial completion of the Prime Contract Work, and for any additional period beyond one year as required under the Prime Contract for correction by the Contractor of the Prime Contract Work, and promptly after receipt of written notice, Subcontractor shall correct all defective Subcontract Work as directed by Contractor. Subcontractor shall indemnify Contractor, Owner, Owner's engineers and consultants, for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- E. All such correction obligations are in addition to the warranty, guarantee, and contractual duties established above and elsewhere in the Subcontract Documents.
- F. The obligations under this Paragraph 8.06 will survive completion of the Subcontract Work and, when the Prime Contract is complete and ready for final payment by Owner,

Contractor may assign its rights under this Paragraph 8.06 to Owner upon agreement between Owner and Contractor and notice to Subcontractor.

ARTICLE 9—CHANGES TO THE SUBCONTRACT

9.01 *Changes*

- A. Without invalidating the Subcontract, Contractor may, at any time or from time to time, order changes to the Subcontract Work including additions, deletions, or revisions in the Subcontract Work. Subcontractor shall promptly proceed with the Subcontract Work as changed. All changed Subcontract Work will be performed under the applicable conditions of the Subcontract Documents. Subcontractor shall not perform any changes to the Subcontract Work that would increase the Subcontract Price or Subcontract Times without express written authority from Contractor.
- B. Subcontractor shall deliver notice of each request for a change in compensation or time within 7 days of the associated directive to perform changed Subcontract Work, and not later than 2 days before Prime Contract requirements relative to submitting claims and change proposals.
- C. Changes in the Subcontract Price for changed Subcontract Work will be made on the basis of either a mutually acceptable lump sum price, or under unit prices consistent with the unit prices set forth in the Subcontract as of the Subcontract Date. To the extent the changed Subcontract Work has no predetermined costs or unit prices under the original Subcontract, and the parties do not agree to a lump sum for the changed Subcontract Work, the amount of the request for changed compensation will be based upon Subcontractor's cost of labor (consistent with any applicable rates negotiated under the original Subcontract), plus the direct costs of sub-subcontracts, materials and equipment to be consumed or incorporated in the changed Subcontract Work, plus overhead and profit consistent with the price negotiated for the original Subcontract Work and subject to approval by Contractor.
- D. To the extent that a change to the Subcontract Work resulted from a revision of the Prime Contract, the compensation to Subcontractor for such changed Subcontract Work will be limited to the amount collected by Contractor from Owner on behalf of Subcontractor for such change in the Subcontract Work. In the event that the revision results in a deduction of the Subcontract Price, the deduction will be based upon the share of the deduction assessed against Contractor under the Prime Contract that is attributable to the change in Subcontract Work.

ARTICLE 10—BONDS, INSURANCE, AND INDEMNIFICATION

10.01 *Performance Bond, Payment Bond, and Other Bonds*

- A. If expressly listed as Subcontract Documents in Article 13, or expressly required of Subcontractor elsewhere in the Subcontract Documents, Subcontractor shall at its expense furnish a performance bond and a payment bond, each in an amount equal to or greater than the Subcontract Price, as security for the faithful performance and payment of all of Subcontractor's obligations under the Subcontract Documents. If the Subcontract Documents as of the Subcontract Date do not require performance and payment bonds, but Contractor subsequently instructs Subcontractor to furnish such bonds, Subcontractor shall do so at Contractor's expense.

- B. The performance and payment bonds must remain in effect until not less than the longer of:
 - (1) one year after the date when final payment becomes due from Contractor; or
 - (2) completion of the correction period specified in this Subcontract, except as provided otherwise by applicable laws or regulations. Subcontractor shall also furnish such other bonds as are required by the Subcontract Documents. The performance bond will be issued on EJCDC® C-610 Performance Bond (2018), or equivalent. The Payment Bond will be issued on the EJCDC® C-615 Payment Bond (2018), or equivalent. Terms of these bonds apply except as expressly provided otherwise by laws or regulations.
- C. If the Prime Contract requires that Contractor furnish a Warranty Bond, then Subcontractor shall furnish a Warranty Bond with respect to the Subcontract Work, under the same requirements. The bond will be issued using EJCDC® C-612, Warranty Bond (2018), or equivalent.
- D. All bonds must be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- E. Subcontractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- F. If the surety on a bond furnished by Subcontractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Subcontractor shall promptly notify Contractor and shall, within 20 days after the event giving rise to such notification, furnish another bond and surety, both of which must comply with the bond and surety requirements above.
- G. If the Subcontract requires Subcontractor to provide its own performance bond and payment bond, as described in Paragraphs 10.01.A. through D., the Contractor may, at its sole discretion, provide such bonds for the Subcontractor, either as individual instruments or as a part of Contractor's bonding. In such case Subcontractor shall be responsible to Contractor for a proportionate share of Contractor's bond costs, computed as the percentage of the total Subcontract Price relative to the total bonded Contract Price, and the Subcontract Price will be adjusted accordingly.
- H. As an alternative to requiring Subcontractor to provide or contribute to the cost of performance bonds or payment bonds as described in this Paragraph 10.01, the Contractor may, at its sole discretion, waive such requirements for this Subcontract, and the Subcontract Price will be adjusted accordingly.
- I. If Subcontractor has failed to obtain a required bond, Contractor may exclude the Subcontractor from the site and exercise Contractor's termination rights under Article 11.
- J. Upon request, Contractor shall provide a copy of the payment bond to any sub-subcontractor, supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Subcontract Work.

10.02 Insurance—General Provisions

- A. Subcontractor shall obtain and maintain insurance as required in this Article and in any Subcontract exhibit or supplementary Subcontract Document regarding insurance.
- B. All insurance required by the Subcontract to be purchased and maintained by Subcontractor must be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated elsewhere in the Subcontract Documents, all companies that provide insurance policies required under this Subcontract must have an A.M. Best rating of A-VII or better.
- C. Subcontractor shall deliver to Contractor, with copies to each named insured and additional insured (as identified here or elsewhere in the Subcontract Documents), certificates of insurance establishing that Subcontractor has obtained and is maintaining the policies, coverages, and endorsements required by the Subcontract. Upon request by Contractor or any other insured, Subcontractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Subcontractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. Failure of Contractor to demand such certificates or other evidence of the Subcontractor's full compliance with these insurance requirements, or failure of Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the Subcontractor's obligation to obtain and maintain such insurance.
- E. If Subcontractor does not purchase or maintain all of the insurance required of it by this Subcontract, the Subcontractor shall notify Contractor in writing of such failure to purchase prior to the start of the Subcontract Work, or of such failure to maintain prior to any change in the required coverage.
- F. If Subcontractor has failed to obtain and maintain required insurance, Contractor may exclude the Subcontractor from the site and exercise Contractor's termination rights under Article 11.
- G. Without prejudice to any other right or remedy, if Subcontractor has failed to obtain required insurance, Contractor may elect to obtain equivalent insurance to protect Contractor's interests at the expense of Subcontractor, and the Subcontract Price will be adjusted accordingly.
- H. Contractor does not represent that insurance coverage and limits established in this Subcontract necessarily will be adequate to protect Subcontractor or Subcontractor's interests.
- I. The insurance and insurance limits required herein will not be deemed as a limitation on Subcontractor's liability under the indemnities granted to Contractor and other individuals and entities in the Subcontract Documents.

10.03 Subcontractor's Insurance

- A. **Workers' Compensation:** Subcontractor shall purchase and maintain workers' compensation and employer's liability insurance for:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
2. United States Longshoreman and Harbor Workers' Compensation Act (if applicable) and Jones Act coverage (if applicable).
3. claims for damages because of bodily injury, occupational sickness or disease, or death of Subcontractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
4. Foreign voluntary worker compensation (if applicable).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Jones Act (if applicable)	
Bodily injury by accident—each accident	\$500,000
Bodily injury by disease—aggregate	\$500,000
Employer's Liability	
Each accident	\$500,000
Each employee	\$500,000
Policy limit	\$500,000
Stop-gap Liability Coverage	
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	\$500,000

- B. **Commercial General Liability—Claims Covered:** Subcontractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Subcontractor, on an occurrence basis, against:
1. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Subcontractor's employees;
 2. Claims for damages insured by reasonably available personal injury liability coverage; and
 3. Damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. **Commercial General Liability—Form and Content:** Subcontractor's commercial liability policy must be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance must remain in effect for three years after final payment.

- b. Subcontractor shall furnish Contractor and each other additional insured (as identified in this Article or elsewhere in the Subcontract Documents) evidence of continuation of such insurance at final payment and three years thereafter.
 - 2. Blanket contractual liability coverage, including but not limited to coverage of Subcontractor's contractual indemnity obligations under the Subcontract Documents.
 - 3. Severability of interest.
 - 4. Underground, explosion, and collapse coverage.
 - 5. Personal injury coverage.
 - 6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or their equivalent if Subcontractor demonstrates that the specified endorsements are not commercially available.
 - 7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
 - 8. If governing law invalidates or restricts the use of a specified additional insurance endorsement, then Subcontractor will furnish an endorsement that is compliant with governing law while providing reasonable protection of the interests of the additional insureds.
- D. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
- 1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Subcontractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
 - 2. Any exclusion for water intrusion or water damage.
 - 3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
 - 4. Any exclusion of coverage relating to earth subsidence or movement.
 - 5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).
 - 6. Any limitation or exclusion based on the nature of Subcontractor's work.
 - 7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000

- E. *Automobile Liability:* Subcontractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Bodily Injury	
Each Person	\$1,000,000
Each Accident	\$1,000,000
Property Damage	
Each Accident	\$1,000,000
[or]	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000

- F. *Umbrella or Excess Liability:* Subcontractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	\$2,000,000
General Aggregate	\$2,000,000

- G. *Subcontractor's Pollution Liability Insurance:* Subcontractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Subcontractor's operations and completed operations. The completed operations coverage must remain in effect for no less than three years after final completion.

Contractor's Pollution Liability	Policy limits of not less than:
Each Occurrence/Claim	\$1,000,000
General Aggregate	\$1,000,000

- H. *Additional Insureds:* The Subcontractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, and pollution liability policies must include and list as additional insureds Contractor, Owner, and Owner's engineers, architects, and consultants, and any individuals or entities identified as additional insureds elsewhere in the Subcontract Documents; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds must provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Subcontractor shall obtain all necessary endorsements to support these requirements.

- I. *Subcontractor's Professional Liability Insurance:* If Subcontractor will provide or furnish professional services under this Subcontract, through a delegation of professional design services or otherwise, then Subcontractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Subcontract and for a minimum of two years after Substantial Completion of the Project. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.
- J. *General provisions:* The policies of insurance required by this Paragraph 10.03 must:
 1. include at least the specific coverages provided in this Subcontract.
 2. be written for not less than the limits of liability expressly provided in this Subcontract, including any Subcontract exhibit or supplementary Subcontract Document specifying insurance policy limits, or if no such express insurance limits are set forth in the Subcontract, then for not less than the limits required of Contractor by Owner in the Prime Contract, for the corresponding types of insurance. If laws or regulations require a higher limit, then Subcontractor shall meet such legal requirement.
 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 10 days prior written notice has been given to Subcontractor. Within three days of receipt of any such written notice, Subcontractor shall provide a copy of the notice to Contractor and each other insured under the policy.
 4. remain in effect at least until final payment (and longer if expressly required herein) and at all times thereafter when Subcontractor may be correcting, removing, or replacing defective Subcontract Work as a warranty or correction obligation, or otherwise, or returning to the site to conduct other tasks arising from the Subcontract Documents.
 5. be appropriate for the Subcontract Work being performed and provide protection from claims that may arise out of or result from Subcontractor's performance of the Subcontract Work and Subcontractor's other obligations under the Subcontract Documents, whether it is to be performed by Subcontractor, any lower-tier subcontractor or supplier, or by anyone directly or indirectly employed by any of them to perform any of the Subcontract Work, or by anyone for whose acts any of them may be liable.
- K. Subcontractor waives all rights against Owner, Contractor, and all individuals or entities identified in the Prime Contract's Supplementary Conditions to be listed as insureds or additional insureds under the builder's risk, installation floater, or other forms of property insurance, and against the Owner's engineers and consultants, and their consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such builder's risk, installation floater, or other form of property insurance applicable to the work under the Prime Contract; and Contractor waives all rights against Subcontractor for all such losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such builder's risk, installation floater, or other form of property insurance applicable to the work under the Prime Contract.

- L. If Contractor is responsible under the Prime Contract and any builder's risk or other property insurance policy for the payment of a deductible, or an amount within a deductible, and the need to pay such deductible or amount within a deductible is attributable in whole or part to the actions or inactions of Subcontractor, its sub-subcontractors, employees, agents, or others for which Subcontractor is responsible, then Subcontractor shall pay its attributable share of such deductible.
- M. Upon request the Contractor shall provide to Subcontractor a copy of any builder's risk, installation floater, or other property insurance policy applicable to the work under the Prime Contract. Contractor may block out (redact) any confidential premium or pricing information contained in any such policy. Subcontractor may elect to obtain other insurance at its expense, if it concludes that its interests are not insured under such policy.

N. *Other Required Insurance: NA.*

10.04 *Indemnification*

- A. To the fullest extent permitted by laws and regulations, Subcontractor shall indemnify and hold harmless Contractor, Owner, and Owner's engineers and consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Subcontract Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Subcontract Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Subcontractor, any lower tier subcontractor, supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Subcontract Work or anyone for whose acts any of them may be liable.
- B. In addition to the indemnification obligations in the preceding paragraph, Subcontractor shall indemnify Contractor for all economic costs and expenses, including attorney's fees, for any claim against Contractor as a result of and to the extent caused by Subcontractor's breach of any obligation under the Subcontract.
- C. In any and all claims against Contractor, Owner, or Owner's engineers or consultants, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Subcontractor, any lower tier subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Subcontract Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 10.04.A. must not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor, lower-tier subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- D. With respect to the Subcontract Work, the breach of obligations under the Subcontract, and any negligent act or omission of Subcontractor, any lower tier subcontractor, supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Subcontract Work, or anyone for whose acts any of them may be liable, and to the fullest

extent permitted by law, Subcontractor assumes the same or corresponding responsibilities as Contractor for indemnity obligations set forth in the Prime Contract.

ARTICLE 11—SUSPENSION AND TERMINATION

11.01 Contractor May Suspend Work

- A. In the event that Owner suspends the work of Contractor under the Prime Contract, Contractor may suspend the performance of the Subcontract or any portion thereof for a period of not more than 90 consecutive days, by giving notice in writing to Subcontractor of such suspension. Subcontractor shall resume the Subcontract Work when instructed by Contractor to do so. Subcontractor shall be granted an adjustment in the Subcontract Price or an extension of the Subcontract Times, or both, directly attributable to any such suspension only to the extent that Contractor receives an adjustment of the Prime Contract price or the Prime Contract time for the Subcontractor's proportionate share of work under the Prime Contract.
- B. Contractor may suspend the Subcontract Work for a period of not more than 90 days, or to the extent permitted by the progress schedule or any express provision of the Subcontract Documents, for Contractor's own purposes.
- C. Contractor may suspend the work of Subcontractor with all costs and liability for any delay in the Subcontract Work and others to be assessed against the Subcontractor for the following Subcontract violations until the Subcontractor demonstrates it has cured the violations as follows:
 1. Subcontractor fails to comply with the Owner's or Contractor's safety program;
 2. Subcontractor or its employees are in violation of OSHA or state or local safety laws or regulations;
 3. Subcontractor has installed defective Subcontract Work that is not in compliance with the Subcontract Documents and has failed to cure the defective Subcontract Work;
 4. Subcontractor has violated any laws or regulations applicable to the performance of the Subcontract Work; and
 5. Subcontractor has failed to pay a supplier or lower-tier subcontractor pursuant to Subcontractor's legal or contractual obligations.
- D. If Subcontractor fails to comply with the progress schedule, causing delay to the Subcontract Work or the Prime Contract work, after three days' notice by Contractor and failure of Subcontractor to demonstrate that it has implemented procedures to comply with the schedule through measures such as providing supplemental labor, materials, and tools, then Contractor may implement its own procedures to meet the schedule, by providing supplemental labor, materials, tools, or taking other measures, through its own or other forces, and Contractor may assess the cost of such supplemental procedures against the Subcontract.

11.02 Contractor May Terminate for Cause

- A. The occurrence of any one or more of the following events will justify termination for cause:
 1. Subcontractor's persistent failure to perform the Subcontract Work in accordance with the Subcontract Documents (including, but not limited to, failure to supply sufficient

- skilled workers, suitable materials, or equipment, or failure to adhere to the Subcontract progress schedule);
2. Subcontractor's disregard of laws or regulations of any public body having jurisdiction;
 3. Subcontractor's repeated disregard of the authority of Contractor; or
 4. Subcontractor's failure to perform or otherwise to comply with a material term of the Subcontract.
- B. If one or more of the events identified in the preceding paragraph occur, Contractor may, after giving Subcontractor 7 days written notice of its intent to terminate the services of Subcontractor, or in the event the Subcontractor provided a performance bond covering the Subcontract the Contractor may provide notice to the Subcontractor and surety in accordance with the requirements of the applicable performance bond of its intent to terminate the services of Subcontractor to preserve Contractor's rights under the performance bond. Upon termination of the Subcontract, Contractor may:
1. exclude Subcontractor from the site, and take possession of the Subcontract Work;
 2. incorporate in the Subcontract Work all materials and equipment stored at the site, or for which Contractor has paid Subcontractor but which are stored elsewhere; and
 3. complete the Subcontract Work as Contractor may deem expedient.
- C. If Contractor proceeds as provided in Paragraph 11.02.B., Subcontractor shall not be entitled to receive any further payment until the Subcontract Work is completed. If the unpaid balance of the Subcontract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor arising out of or relating to completing the Subcontract Work, such excess will be paid to Subcontractor. If such claims, costs, losses, and damages exceed such unpaid balance, Subcontractor shall pay the difference to Contractor. When exercising any rights or remedies under this paragraph, Contractor shall not be required to obtain the lowest price for the Subcontract Work performed.
- D. Notwithstanding Paragraphs 11.02.A. and 11.02.B., Subcontractor's services will not be terminated if Subcontractor begins within four days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 14 days of receipt of said notice. If the Subcontractor fails to cure within 14 days of receipt of said notice, the Subcontract will be deemed terminated in accordance with provisions 11.02.A through 11.02.C upon two days' notice by the Contractor following the 14-day period.
- E. Where Subcontractor's services have been so terminated by Contractor, the termination will not affect any rights or remedies of Contractor against Subcontractor then existing or which may thereafter accrue. Any retention or payment of money due Subcontractor by Contractor will not release Subcontractor from liability.
- F. If and to the extent that Subcontractor has provided a performance bond, the termination procedures of that bond will supersede the procedures in this Paragraph 11.02.

11.03 *Termination of Contractor or Rejection of Subcontract by Owner*

- A. The Contractor may terminate the Subcontract at any time, if the Prime Contract is terminated by the Owner, or if Owner rejects the Subcontract in accordance with the terms of the Prime Contract, the Contractor may terminate the Subcontract without penalty.
- B. In the event of a termination pursuant to Paragraph 11.03, the costs and expenses to be paid to Subcontractor resulting from a termination under this provision must be limited to the costs and expenses recovered by Contractor from Owner on Subcontractor's behalf.

11.04 *Contractor May Terminate for Convenience*

- A. Upon 7 days written notice to Subcontractor, Contractor may, without cause and without prejudice to any other right or remedy of Contractor, terminate the Subcontract. In such case, Subcontractor shall be paid for (without duplication of any items):
 1. Completed and acceptable Subcontract Work executed in accordance with the Subcontract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Subcontract Work;
 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Subcontract in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 3. Reasonable expenses directly attributable to termination.
- B. Subcontractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

11.05 *Subcontractor May Stop Work or Terminate*

- A. If, through no act or fault of Subcontractor, Contractor after receipt of payment from Owner fails to make payment due Subcontractor, for more than 30 days after payment is due, then Subcontractor may, upon 7 days written notice to Contractor, and provided Contractor does not remedy such failure within 7 days thereafter, terminate the Subcontract and recover payment from Contractor subject to the terms of this Subcontract.
- B. As an alternative to terminating the Subcontract and without prejudice to any other right or remedy, if a payment owed to Subcontractor is more than 30 days past due, then Subcontractor may, 7 days after written notice to Contractor, stop the Subcontract Work until payment is made of all such amounts due Subcontractor, including interest thereon at an annual rate of five percent per annum, or if applicable at the rate prescribed by law, without penalty.
- C. If the Contractor suspends the Subcontractor's work for more than 120 days, the Subcontractor may upon 7 days' written notice terminate the Subcontract and recover the amounts due the Subcontractor for Subcontract Work completed as of the date of termination, including retainage withheld from the Subcontractor to date and interest thereon at an annual rate of five percent per annum, or if applicable at the rate prescribed by law, without penalty.

ARTICLE 12—CLAIMS AND DISPUTE RESOLUTION

12.01 *Claims*

- A. As a condition precedent to any consideration, pursuit, or recovery by Subcontractor of any change proposal, request, demand, or claim (collectively referred to as "Claim") seeking an increase in Subcontract Price, Subcontract Time, or both, Subcontractor shall provide notice of any such Claim to Contractor no less than 30 days after the event giving rise to the Claim, and for Claims related in any way to the Owner or Prime Contract, within five days.
- B. Subcontractor's recovery of additional cost, time, or both cost and time for any Claim attributable to the Owner will be limited to the proportionate recovery by Contractor against Owner for such Claim. Subcontractor will cooperate and assist Contractor in pursuing any Claim by Contractor against Owner on behalf of Subcontractor, including the timely preparation and delivery of supporting documentation.
- C. If the pursuit of any Claim by Contractor against Owner on Subcontractor's behalf requires the expenditure by Contractor of legal or consulting fees, or results in litigation, arbitration, or any dispute resolution procedures, Subcontractor agrees to pay for a proportionate share of attorneys' fees, consultant fees, and litigation, arbitration, and other resolution costs incurred by Contractor in pursuing the claim on behalf of Subcontractor, based upon the amount claimed by Subcontractor as compared to the total value of the claim pursued by the Contractor.
- D. Except as provided by applicable lien, bond, or prompt payment laws, Subcontractor shall not make any direct claims against Owner for compensation or additional compensation for performance of the Subcontract Work.

12.02 *Dispute Resolution*

- A. Either Contractor or Subcontractor may request mediation of any dispute between Contractor and Subcontractor in connection with this Subcontract that has not been settled to their mutual satisfaction within the applicable notice or cure periods provided in this Subcontract, or that Contractor has not pursued against Owner as described above. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Subcontract Date. The request for mediation must be submitted in writing to the American Arbitration Association and the other party to this Subcontract.
- B. Contractor and Subcontractor shall participate in the mediation process in good faith. The process must be concluded within 60 days of filing of the request. The date of termination of the mediation must be determined by application of the mediation rules referenced above.
- C. If the dispute is not resolved by mediation, each party to this Subcontract shall be barred from further action to assert its claim after 30 days after termination of the mediation unless, within that time period, Contractor or Subcontractor:
 1. elects in writing to invoke any dispute resolution procedure expressly provided for in a Subcontract exhibit or elsewhere in the Subcontract Documents; or
 2. agrees with the other party to submit the dispute to another dispute resolution process; or

3. gives written notice to the other party of the intent to submit the claim to a court of competent jurisdiction.
- D. If Contractor is engaged in an arbitration with Owner that relates, in whole or in part, to a dispute between Contractor and Subcontractor, then Contractor shall have the sole and exclusive discretion to join Subcontractor as a party to the Contractor-Owner arbitration. Subcontractor consents to the jurisdiction of any such arbitration proceeding to which it is joined pursuant to this provision.

ARTICLE 13—SUBCONTRACT DOCUMENTS

13.01 Subcontract Contents

- A. The Subcontract Documents consist of the following:
 1. This Subcontract.
 2. Prime Contract, with the exception of confidential terms. The following portions of the Prime Contract are available upon request:
 - a. General Conditions.
 - b. Supplementary Conditions.
 - c. Specifications
 - d. Plans and Drawings
 3. Subcontract performance bond.
 4. Subcontract payment bond.
 5. Subcontract warranty bond. **Not required for this contract.**
 6. Subcontractor's bid or proposal.
 7. Subcontractor's W-9 certificate.
 8. Other exhibits to this Subcontract (enumerated as follows): **NA**
 9. The following which may be delivered or issued on or after the Subcontract Date and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The documents listed in the paragraph above are attached to this Subcontract (except as expressly noted otherwise above).
- C. There are no Subcontract Documents other than those listed above in this Article 14. The Subcontract supersedes prior negotiations, representations, and agreements regarding the Subcontract Work, whether written or oral.

- D. The Subcontract Documents may only be amended, modified, or supplemented by written agreement of Contractor and Subcontractor.

ARTICLE 14—MISCELLANEOUS

14.01 *Terms*

Terms used in this Subcontract will have the meanings stated here, or in the Prime Contract's General Conditions and Supplementary Conditions.

14.02 *Assignment of Subcontract*

No assignment by Subcontractor of any rights under or interests in the Subcontract will be binding on Contractor without Contractor's written consent; and, specifically but without limitation, payments that may become due and money that is due may not be assigned by Subcontractor without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Subcontract Documents.

14.03 *Successors and Assigns*

Contractor and Subcontractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Subcontract Documents.

14.04 *Severability*

Any provision or part of the Subcontract Documents held to be void or unenforceable under any law or regulation will be deemed stricken, and all remaining provisions must continue to be valid and binding upon Contractor and Subcontractor, which agree that the Subcontract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

ARTICLE 15—SUBCONTRACTOR'S REPRESENTATIONS AND CERTIFICATIONS

15.01 *Subcontractor's Representations*

- A. In order to induce Contractor to enter into this Subcontract, Subcontractor makes the following representations:

1. Subcontractor has examined and carefully studied the Subcontract Documents, and any data and reference items identified in the Subcontract Documents, including but not limited to initial schedules identified by Contractor.
2. Subcontractor has visited the site, conducted a thorough visual examination of the site and adjacent areas, and become familiar with the general, local, and site conditions that may affect cost, progress, and performance of the Subcontract Work.
3. Subcontractor is familiar with and is satisfied as to all laws and regulations that may affect cost, progress, and performance of the Subcontract Work.
4. Subcontractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the site and drawings of physical conditions relating to existing surface or subsurface structures at the site that have been identified by the

Prime Contract or Subcontract, especially with respect to technical data in such reports and drawings.

5. Subcontractor has carefully studied reports and drawings of hazardous environmental conditions, if any, at or adjacent to the site that have been identified in the Prime Contract or Subcontract, especially with respect to technical data in such reports and drawings.
6. Subcontractor has considered the information known to Subcontractor itself; information commonly known to contractors and subcontractors doing business in the locality of the site; information and observations obtained from visits to the site; the Subcontract Documents; and the site-related reports and drawings, if any, identified in the Prime Contract or Subcontract, with respect to the effect of such information, observations, and documents on (a) the cost, progress, and performance of the Subcontract Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Subcontractor; and (c) Subcontractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraphs, Subcontractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Subcontract Work at the Subcontract Price, within the Subcontract Times, and in accordance with the other terms and conditions of the Subcontract.
8. Subcontractor is aware of the general nature of work to be performed by Owner, Contractor, other subcontractors, and others at the site that relates to the Subcontract Work as indicated in the Subcontract Documents.
9. Subcontractor has given Contractor written notice of all conflicts, errors, ambiguities, or discrepancies that Subcontractor has discovered in the Subcontract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Contractor is acceptable to Subcontractor.
10. The Subcontract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Subcontract Work.
11. Subcontractor's entry into this Subcontract constitutes an incontrovertible representation by Subcontractor that without exception all prices in the Subcontract are premised upon performing and furnishing the Subcontract Work required by the Subcontract Documents.

15.02 Subcontractor's Certifications

- A. Subcontractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Subcontract. For the purposes of this paragraph:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Subcontract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Subcontract to the detriment of

- Owner or Contractor, (b) to establish bid or Subcontract prices at artificial non-competitive levels, or (c) to deprive Owner or Contractor of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner or Contractor, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Subcontract.

IN WITNESS WHEREOF, Contractor and Subcontractor have signed this Subcontract.

The Effective Date of the Subcontract is February 18, 2022.

Contractor:

J&J Earth Works, Inc.

(typed or printed name of organization)

By:

(individual's signature)

Name: Jamie Andrews

(typed or printed)

Title: Vice President

(typed or printed)

Date:

(date signed)

Attest:

(individual's signature)

Name: Stacy Andrews

(typed or printed)

Title: Office Manager

(typed or printed)

Address for giving notices:

1002 S Madison St.

Milbank, SD 57252

Designated Representative:

Name: Colin Paulsen

(typed or printed)

Title: Superintendent of Project Operations

(typed or printed)

Address:

1002 S Madison St

Milbank, SD 57252

Phone: 605-868-1922

Email: Colin.paulsen@outlook.com

(If Contractor or Subcontractor is a corporation, attach evidence of authority to sign.)

Subcontractor:

Timmons Construction Inc

(typed or printed name of organization)

By:

Br Timmons

(individual's signature)

Name: Brad Timmons

(typed or printed)

Title: President

(typed or printed)

Date:

3/2/2022

(date signed)

(If Subcontractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

Tina Strohschein

(individual's signature)

Name: Tina Strohschein

(typed or printed)

Title: Office manager

(typed or printed)

Address for giving notices:

1206 Western Ave

Brookings SD 57009

Designated Representative:

Name: Brad Timmons

(typed or printed)

Title: president

(typed or printed)

Address:

1206 Western Ave

Brookings SD 57009

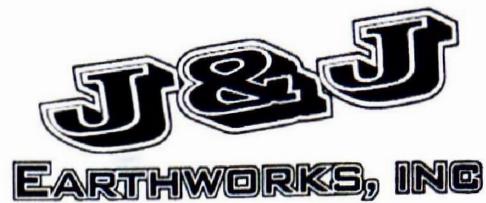
Phone: 605.695.9829

Email: timmonsconstructioninc@gmail.com

License No.:

(where applicable)

State: South Dakota



February 14, 2022

Timmons Construction Inc.
Brad Timmons
1306 Western Avenue
Brookings, SD 57006

RE: Highway 212 Reconstruction - Watertown, South Dakota

Timmons Construction Inc.:

Please sign and return the following docs:

Standard Subcontract Agreement-2 Originals
W-9
Payment and Performance Warranty documents

Also, be sure to include your Certificate of Insurance with the minimum limits as outlined in the Standard Subcontract Agreement.

We look forward to working with you.

Sincerely,

Colin A. Paulsen /S/
Superintendent of Project Operations

1002 S. Madison Street
Milbank, SD 57252

Office: 605-422-7066 Fax: 605-422-6715 Teremy Cell: 320-761-3908 Tamie Cell: 605-924-0406

TCI_00000028

Timmons Construction Inc.

For All Your Concrete Needs

Insured • Bonded • ACI Certified

Ph. (605) 695-9829
Fax (605) 696-9829

1306 Western Ave. • Brookings, SD 57006

11.30.2021

Re: SDDOT NH0212(174)377

Location: Watertown, SD

This proposal includes:

- INCLUDES ALL NECESSARY SALES TAX ON MATERIALS
- INCLUDES ALL MOBILIZATION/TRANSIT COSTS
- DOES NOT INCLUDE EXCISE TAX, BONDS, DUES, OR RAILROAD INSURANCE
- DOES NOT INCLUDE ANY EXCAVATION, DIRT REMOVAL, BACKFILL, FILL GRAVEL, OR HAULING
- DOES NOT INCLUDE ANY WINTER CONCRETE COSTS

Bid Item	Description	Qty	Unit	Unit Price	TOTAL
009e0010	Mobilization	1.00	LS	\$ 225,000.00	\$ 225,000.00
380e3520	6" PCC Approach Pavement	1255.80	SqYd	\$ 58.80	\$ 73,841.04
380e3525	6" Reinforced PCC Approach Pavement	14.60	SqYd	\$ 70.10	\$ 1,023.46
380e3540	8" PCC Approach Pavement	440.00	SqYd	\$ 65.65	\$ 28,886.00
380e3545	8" Reinforced PCC Approach Pavement	4.60	SqYd	\$ 76.90	\$ 353.74
380e4010	6" PCC Fillet Section	21.20	SqYd	\$ 100.00	\$ 2,120.00
380e4080	9.5" PCC Fillet Section	237.90	SqYd	\$ 112.50	\$ 26,763.75
470e0120	Steel Pedestrian Railing on Sidewalk	70.00	Ft	\$ 175.00	\$ 12,250.00
530e0300	Type C Concrete Retaining Wall	1193.00	SqFt	\$ 37.50	\$ 44,737.50
650e0060	Type B66 Concrete Curb and Gutter	1487.00	Ft	\$ 19.25	\$ 28,624.75
650e0095	Type B69.5 Concrete Curb and Gutter	11131.00	Ft	\$ 22.50	\$ 250,447.50
650e0395	Type BL69.5 Concrete Curb and Gutter	106.00	Ft	\$ 23.00	\$ 2,438.00
650e1560	Type R48 Concrete Curb and Gutter	124.00	Ft	\$ 30.00	\$ 3,720.00
650e3060	Type B6 Concrete Curb	18.00	Ft	\$ 45.00	\$ 810.00
650e4660	Type P6 Concrete Gutter	134.00	Ft	\$ 19.00	\$ 2,546.00
650e4695	Type P9.5 Concrete Gutter	1262.00	Ft	\$ 22.50	\$ 28,395.00
651e0040	4" Concrete Sidewalk	2397.00	SqFt	\$ 5.40	\$ 12,943.80
651e0060	6" Concrete Sidewalk	47358.00	SqFt	\$ 6.10	\$ 288,883.80
651e0160	6" Reinforced Concrete Sidewalk	3662.00	SqFt	\$ 7.40	\$ 27,098.80
651e7000	Type 1 Detectable Warnings, includes plates	865.00	SqFt	\$ 54.50	\$ 47,142.50

670e1200	Type B Frame and Grate Assembly, install labor only	22.00	Each	\$ 75.00	\$ 1,650.00
670e2200	Type C Frame and Grate, install labor only	1.00	Each	\$ 75.00	\$ 75.00
670e5202	Special Frame and Grate, install labor only	4.00	Each	\$ 75.00	\$ 300.00
671e7010	Adjust Manhole, adjustment labor only	16.00	Each	\$ 55.00	\$ 880.00
900e5145	Bollard	3.00	Each	\$ 825.00	\$ 2,475.00
380e0080	9.5" Nonreinforced PCC Pavement	41842.30	SqYd	\$ 66.55	\$ 2,784,605.07
380e3020	6" PCC Driveway Pavement	379.20	SqYd	\$ 60.80	\$ 23,055.36
380e3040	8" PCC Driveway Pavement	262.90	SqYd	\$ 67.65	\$ 17,785.19
380e6000	Dowel Bar	24678.00	Each	\$ 12.75	\$ 314,644.50
380e6110	Insert Steel Bar in PCC Pavement	134.00	Each	\$ 20.00	\$ 2,680.00
					\$ 4,256,175.75

Bid Item	Description	Qty	Unit	Est \$	Concrete
009e0010	Mobilization	1.00	LS	\$ 2,500.00	\$ 2,500.00
380e0080	9.5" Nonreinforced PCC Pavement	270.00	SqYd	\$ 66.55	\$ 17,968.50
380e6000	Dowel Bar	78.00	Each	\$ 12.75	\$ 994.50
380e6110	Insert Steel Bar in PCC Pavement	165.00	Each	\$ 20.00	\$ 3,300.00
650e0095	Type B69.5 Concrete Curb and Gutter	15.00	Ft	\$ 22.50	\$ 337.50
671e7012	Adjust and Seal Manhole, adjustment only	4.00	Each	\$ 55.00	\$ 220.00
					\$ 25,320.50

Request for Taxpayer Identification Number and Certification► Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the requester. Do not send to the IRS.

Print or type.
See Specific Instructions on page 3.

- 1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

Timmons Construction Inc.

- 2 Business name/disregarded entity name, if different from above

- 3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

Individual/sole proprietor or C Corporation S Corporation Partnership Trust/estate single-member LLC

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

Other (see instructions) ► _____

- 5 Address (number, street, and apt. or suite no.) See instructions.

1300 Western Ave

- 6 City, state, and ZIP code

Brookings SD 57006

- 7 List account number(s) here (optional)

- 4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

Requester's name and address (optional)

Social security number

			-			-			
--	--	--	---	--	--	---	--	--	--

or

Employer identification number

Redacted

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here

Signature of U.S. person ►

Bl Timmons

Date ►

3/2/2022

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
 - Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
 - Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
 - Form 1099-S (proceeds from real estate transactions)
 - Form 1099-K (merchant card and third party network transactions)
 - Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
 - Form 1099-C (canceled debt)
 - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding, later.*