

## **GEOTECH SUB-SUBCONSULTANT AGREEMENT**

**THIS SUB-SUBCONSULTANT AGREEMENT** is made by and between HDR Engineering, Inc. ("HDR") and \_\_\_\_\_ ("Sub-Subconsultant") as follows:

### **1. PRIME AGREEMENT**

HDR has entered into a Subcontract Agreement ("Subcontract"), dated \_\_\_\_\_, 20\_\_ to provide certain professional design services to \_\_\_\_\_ ("Prime Consultant") in connection with the \_\_\_\_\_ ("Project"). Prime Consultant has in turn entered into an agreement ("Prime Agreement") with Project owner \_\_\_\_\_ ("Owner"). The Prime Agreement and Subcontract identified at "Sub-Subconsultant Agreement Attachment A, Schedule of Contract Documents," are incorporated into this Agreement. In the event of a conflict between any of these terms and conditions, the more stringent provision shall control.

### **2. SITE ACCESS AGREEMENT**

Owner has entered into a Site Access Agreement with the Port of Stockton, dated \_\_\_\_\_, 20\_\_ to access the project site in connection with the Project. Prime Consultant has in turn entered into an agreement ("Prime Agreement") with Project owner. The Site Access Agreement identified at "Site Access Agreement Attachment A, Schedule of Contract Documents," are incorporated into this Agreement. In the event of a conflict between any of these terms and conditions, the more stringent provision shall control.

### **3. SCOPE OF SERVICES**

After receiving written notice to proceed, Sub-Subconsultant will perform the scope of services described in Sub-Subconsultant Agreement Attachment B, "Description of Sub-Subconsultant's Services and Time for Performance," in the same manner and to the same extent that HDR is bound to Prime Consultant for those services under the Prime Agreement and Subcontract referenced in Attachment A. The attached scope of services shall not alter, modify or change any of the terms and conditions of this Agreement. All of Sub-Subconsultant's services under this Agreement will be provided as an independent contractor.

### **4. COMMUNICATIONS / DATA**

All of Sub-Subconsultant's communications with Owner, Prime Consultant or HDR's other independent consultants will be through HDR. HDR will provide Sub-Subconsultant with all information and documents pertinent to the services Sub-Subconsultant is to perform to the extent that they are furnished to HDR by Prime Consultant or to be furnished to Sub-Subconsultant under this Agreement.

### **5. STANDARD OF CARE**

All of Sub-Subconsultant's services hereunder shall be performed within generally accepted standards of professional care in the same locality and under similar circumstances and in compliance with all applicable laws, regulations, codes and other requirements. Sub-Subconsultant will obtain all required permits and licenses and complete any certifications in order to perform its Services under this Agreement at Sub-Subconsultant's expense and Sub-Subconsultant will pay for all taxes, charges or fees associated with the performance of Sub-Subconsultant's services.

## 6. PAYMENT

5.1 HDR shall pay Sub-Subconsultant for all authorized and properly performed services as follows:

- Not to Exceed: HDR shall pay Sub-Subconsultant for all authorized and properly performed services at the rates attached hereto in Subconsultant Agreement Attachment C, "Fee Schedule" with a not-to-exceed ("NTE") amount of \$\_\_\_\_\_. Sub-Subconsultant acknowledges that the NTE amount is not a guarantee of minimum work or payment. Sub-Subconsultant shall notify HDR when it has reached 90% of the NTE amount.

HDR shall apply the same retainage to Sub-Subconsultant's payments as the Prime Consultant applies to HDR's payments.

5.2 Payments will be based on monthly billings, either hourly or percent complete for Firm Fixed Price, and final payment will be made only after complete performance of this Agreement and final acceptance of Sub-Subconsultant's services by the Prime Consultant. HDR's receipt of payments from Prime Consultant is a condition precedent to HDR's obligation to pay Sub-Subconsultant and Sub-Subconsultant agrees to share the risk with HDR of Prime Consultant's and Owner's insolvency. Sub-Subconsultant will be paid within ten (10) days after HDR receives payment from Prime Consultant. HDR shall exert reasonable and diligent efforts to collect prompt payment from the Prime Consultant. In the event non-payment from the Owner or Prime Consultant is solely due to the actions of HDR, HDR shall pay Sub-Subconsultant within sixty (60) days from the date HDR receives Sub-Subconsultant's invoice. The parties agree that all invoices must be submitted by Sub-Subconsultant to HDR within ninety (90) days of the date costs are incurred or the scheduled completion date whichever occurs first, or such shorter period of time as required under the Prime Agreement. Sub-Subconsultant waives its right to receive payment on any and all invoices which are not submitted within that time period. No payment will constitute a waiver or acceptance of defective or deficient services, and HDR may withhold or set off any amounts to completely protect HDR or Prime Consultant or Owner from any damage, loss or expense resulting from, including but not limited to, re-performing or rectifying Sub-Subconsultant's defective or deficient services, Sub-Subconsultant's breach of this Agreement, or liens filed by Sub-Subconsultant or any of its subconsultants after Sub-Subconsultant has been paid in accordance with this Agreement.

5.3 Invoices shall be submitted to Nik Anderson and Kristina von Haartman at the email address(es) below. All invoices must reference the HDR Agreement Number, and segregate invoiced amounts by line item including current and cumulative amounts. Sub-Subconsultant's invoice shall be in a format that meets the Owner's requirements. Sub-Subconsultant shall submit an electronic invoice to: [nik.anderson@hdrinc.com](mailto:nik.anderson@hdrinc.com) and [Kristina.vonhaartman@hdrinc.com](mailto:Kristina.vonhaartman@hdrinc.com). Invoices that don't satisfy these requirements will be returned unpaid. Sub-Subconsultant's corrected invoices will be submitted to the Owner for payment in HDR's next scheduled invoice submittal.

## 7. DELAYS

If the time allotted for completion of Sub-Subconsultant's services is exceeded through no fault of Sub-Subconsultant, additional fee and/or time to complete performance may be allowed if written notice of the cost and estimated length of the delay is given to HDR within forty-eight (48) hours of Sub-Subconsultant's discovery of the delay. Sub-Subconsultant will provide such additional supporting data as HDR, Prime Consultant or Owner may require in a timely manner. If the delay is beyond the control of HDR and the Sub-Subconsultant, any additional fee and/or additional time to complete the affected services will only be granted by HDR to the extent it is allowed by the Prime Consultant and/or Owner under the Subcontract and Prime Agreement. If the delay is wholly within the control of HDR, the parties to this Agreement shall negotiate a fee and/or time modification to this Subcontract.

**8. INSTRUMENTS OF SERVICE**

All instruments of service will be in a form and format acceptable to HDR and, where required, will be sealed by a properly registered professional.

**9. SUSPENSION/TERMINATION**

This Agreement will automatically be suspended or terminated, as appropriate, if the Subcontract is suspended or terminated. HDR may also suspend or terminate this Agreement with or without cause upon forty-eight (48) hours written notice. If this Agreement is suspended or terminated because of no fault of Sub-Subconsultant, Sub-Subconsultant will be paid for services it satisfactorily performed to the date of suspension or termination, conditional upon delivery of all instruments of service to HDR, their approval by HDR and Prime Consultant and the receipt of payment for such services from Prime Consultant. In no event will Sub-Subconsultant be entitled to the recovery of damages arising out of or related to the suspension or termination of this Agreement except to the extent HDR is able to recover such damages on Sub-Subconsultant's behalf pursuant to the Subcontract.

**10. RECORD RETENTION**

Sub-Subconsultant will retain all records pertaining to its services for at least (3) years or the records retention period required by the Owner, whichever is longer, following the completion or termination of Sub-Subconsultant's service under this Agreement. Samples, if any, will be retained for at least ninety (90) days after analysis, and disposal of any substances will be made only with the written approval of HDR and will be in accordance with all applicable laws and regulations. When requested, the records will be promptly transferred to HDR.

**11. INSURANCE**

Sub-subconsultant will procure and maintain the same types and amounts of insurance for the same period as HDR, if required to do so under the Prime Agreement. Otherwise, at a minimum, unless otherwise agreed upon in writing, Sub-subconsultant will procure and maintain the following types and amounts of insurance for the duration of the Project: workers' compensation insurance as required by law including the USL&H / Jones Act coverage if applicable, \$1,000,000 of employer's liability insurance, commercial general liability insurance of \$1,000,000 combined single limit for personal injury and property damage, automobile liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired cars, owned and non-owned vehicles, professional liability insurance in the amount of \$1,000,000 per claim.

and in the aggregate, and equipment insurance covering the full replacement value of the equipment. Pollution liability coverage shall be included under Sub-subconsultant's commercial general liability policy or under a separate contractor pollution liability insurance policy in the amount of \$1,000,000 per occurrence and in the aggregate. Professional liability insurance shall be maintained for a minimum of three (3) years beyond the date this Agreement is completed or terminated. The commercial general liability insurance must include contractual liability coverage including coverage for any indemnities. HDR, Prime and Owner shall be made additional insureds on the commercial general liability policy, automobile liability policy and, if applicable, contractor pollution liability insurance policy. With regard to the equipment insurance, the insurance carrier, Sub-subconsultant, and the owner of the equipment (if different than Sub-subconsultant) shall waive subrogation against HDR, Prime and Owner. With regard to the workers compensation insurance, the insurance carrier and Sub-subconsultant shall waive subrogation against HDR, Prime and Owner. Notwithstanding anything to the contrary in any Attachment to this Agreement, HDR shall not be required to provide any insurance to Sub-subconsultant.

## **12. CERTIFICATES OF INSURANCE**

Certificates of Insurance, satisfactory to HDR, will be furnished to HDR before any services are performed. Sub-Subconsultant will provide for written notice to HDR prior to cancellation of any of the required insurance policies before the expiration date thereof. All certificates of insurance must be kept in force throughout the duration of the services. If any of Sub-Subconsultant's or its subconsultant's coverage is renewed at any time prior to completion of the services, the Sub-Subconsultant shall be responsible for obtaining updated insurance certificates for itself and such sub-consultant from the respective insurance carriers and forwarding the replacement certificates to HDR within five (5) days of the expiration date of any previously delivered certificate. The Certificates shall also provide the name of the Project and HDR's contract number and project number in the description.

## **13. INDEMNIFICATION**

**12.1** To the fullest extent permitted by law, Sub-Subconsultant will indemnify, defend and hold HDR, Prime Consultant, Owner, their employees, officers, directors, and agents harmless, from and against all liability, claims, losses, costs, expenses and fees, including reasonable attorney's fees, arising out of this Project or this Agreement to the extent caused or alleged to have been caused by any willful misconduct or negligent acts, errors or omissions or infringement of intellectual property rights, or breach of this Agreement by Sub-Subconsultant, its agents, employees, subconsultants or suppliers.

**12.2** To the fullest extent permitted by law, Sub-Subconsultant explicitly waives any right it has to immunity under applicable industrial insurance laws and agrees to indemnify, defend and hold HDR, Prime Consultant, Owner, their employees, officers, directors, and agents harmless from any and all liability, losses, costs, expenses and fees, including reasonable attorney's fees, arising out of claims or law suits brought by Sub-Subconsultant's employees or any of its subconsultants' employees for bodily injuries or death sustained while performing services hereunder. Specifically, (i) in the event that all or a portion of the Services is performed in the State of Ohio, the following provision shall be applicable: "Sub-Subconsultant, with respect to the indemnification provisions

contained herein, hereby expressly waives any defense or immunity granted or afforded it pursuant to Section 35, Article II of the Ohio Constitution and Section 4123.74 of the Ohio Revised Code”; (ii) in the event that all or a portion of the Services is performed in the Commonwealth of Pennsylvania, the following provision shall be applicable: “Sub-Subconsultant, with respect to the indemnification provisions contained herein, hereby expressly waives any defense or immunity granted or afforded it pursuant to the Pennsylvania Workers’ Compensation Act, 77 P.S. 481”; and (iii) in the event that all or a portion of the Services is performed in the State of Washington, the following provision shall be applicable: “Sub-Subconsultant, with respect to the indemnification provisions contained herein, hereby expressly waives any defense or immunity granted under the State Industrial Insurance Law, Title 51 RCW. Sub-Subconsultant recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.”

**14. CONFIDENTIALITY**

Sub-Subconsultant will not disclose any confidential or proprietary information of HDR or Owner as identified in writing unless authorized by HDR to do so. Sub-Subconsultant’s employees, officers, agents, subconsultants and suppliers will also be bound to this same obligation. In addition, Sub-Subconsultant will not release any information to third parties or make any public statements about this Project without HDR’s express written consent. It is hereby agreed that the following information is not considered to be confidential under this Agreement:

- a) Information already in the public domain;
- b) Information disclosed to Sub-Subconsultant by a third party who is not under a confidentiality obligation;
- c) Information developed by or in the custody of Sub-Subconsultant before entering into this Agreement;
- d) Information developed by Sub-Subconsultant solely through its work with its other clients; or
- e) Information required to be disclosed by operation of law, including but not limited to, order of court or governmental agency.

**15. SAFETY / COMPLIANCE WITH LAW / INSPECTIONS**

Sub-Subconsultant will comply with all applicable health, safety, and environmental protection requirements of HDR, Owner, federal, state and local authorities. Sub-Subconsultant will take all necessary precautions in the performance of services under this Agreement to protect the safety and health of its employees and any of its subconsultants’ employees. If Sub-Subconsultant is performing any services in the field, Sub-Subconsultant will submit a site-specific safety plan and the name(s) of project qualified and/or competent safety personnel to HDR 10 days prior to the commencement of services in the field. The site-specific plan shall address all health and safety risks posed by the Services, Project site, and in accordance with the requirements set forth in the attached Scope of Work. Sub-Subconsultant’s site-specific health and safety plan shall comply with all applicable laws and requirements of the Prime Agreement and include applicable Job Hazard Analysis (“JHA”) associated with project high hazard work activities. Unless otherwise agreed upon in writing, all safety equipment and safety training for Sub-Subconsultant’s employees shall be provided by Sub-Subconsultant. Sub-Subconsultant shall be responsible for monitoring and ensuring its health and safety plan is being complied with by its employees. Sub-Subconsultant shall be required to notify

HDR project management immediately following any workplace incident and provide HDR with copies of all incident reports within 24 hours of event. Upon request, Sub-Subconsultant shall provide HDR with Sub-Subconsultant's project health and safety documentation. HDR's receipt and review of Sub-Subconsultant's health and safety plan, incident reports, JHA and any additional project safety documentation shall not make HDR responsible for the safety of Sub-Subconsultant's employees nor does it relieve Sub-Subconsultant from liability or responsibility for the safety of their employees, the safe performance of its services, and compliance with applicable laws. If Owner and/or HDR becomes aware of a safety infraction by the Sub-Subconsultant or any of its subconsultants, the Owner and/or HDR shall have the right to take appropriate remedial measures.

**16. GOVERNING LAW / DISPUTES**

This Agreement will be governed by the same law that governs the Subcontract, unless the Subcontract contains no governing law provision. In that case, this Agreement will be governed by the laws of the state in which the Project is located. Upon mutual agreement, any or all disputes may be resolved by binding arbitration in accordance with state law. If any litigation or arbitration is commenced between the parties concerning this Agreement or their respective rights, duties and obligations hereunder, the prevailing party in such litigation or arbitration shall be entitled to reasonable attorney's fees, court costs and litigation expenses.

**17. CHANGES**

If Prime Consultant makes any changes in the Subcontract which are pertinent to Sub-Subconsultant's responsibilities under this Agreement, HDR may make equivalent changes to this Agreement. If the Prime Consultant's change involves an increase in Sub-Subconsultant's scope of services, the parties shall negotiate an equitable adjustment to Sub-Subconsultant's fees and/or the time to complete the additional services. If the change involves a decrease in Sub-Subconsultant's services, HDR has the unilateral right to reduce Sub-Subconsultant's corresponding scope of services and respective fees. Any dispute involving a change in Sub-Subconsultant's scope of services will not delay, postpone, suspend or cause Sub-Subconsultant to refuse to perform any services not affected by the change.

**18. RESPONSIBILITY FOR SUBCONSULTANTS**

**17.1** Sub-Subconsultant is fully responsible to HDR for the actions or inactions of all persons or entities directly or indirectly performing or furnishing services on behalf of Sub-Subconsultant under this Agreement to the same extent as Sub-Subconsultant is responsible to HDR under this Agreement and Sub-Subconsultant will require all such persons or entities to perform their services in the same manner and to the same extent as Sub-Subconsultant is bound by this Agreement.

**17.2** Sub-Subconsultant will be responsible for the payment of all persons or entities performing services for Sub-Subconsultant or on Sub-Subconsultant's behalf; neither Owner, Prime Consultant nor HDR will have any responsibility for such payment. In addition, Sub-Subconsultant will not retain the services of any person or entity against whom Owner, Prime Consultant or HDR has a reasonable objection.

**19. DEFAULT**

If Sub-Subconsultant becomes insolvent or is otherwise in default of this Agreement, HDR may, without prejudice to any of its other rights or remedies and without liability to Sub-Subconsultant, terminate this Agreement and complete the services Sub-Subconsultant was obligated to provide hereunder as HDR deems appropriate. In such event, Sub-Subconsultant will be liable to HDR for all costs HDR incurs, less any sums HDR is paid by Prime Consultant, for completing Sub-Subconsultant's services.

**20. NOTICES**

All communications required by this Agreement may be personally delivered or mailed to the other party at the address set forth on the signature page. The address and party may be changed by written notice given as provided in this paragraph.

**21. ENTIRE AGREEMENT**

This Agreement contains the parties' entire understanding and supersedes all prior negotiations or agreements over the services described herein. This Agreement may only be modified by written instrument duly executed by both parties, except as otherwise provided herein.

**22. ASSIGNMENT**

Sub-Subconsultant may not assign its rights and interests under this Agreement without the written consent of HDR. Unless otherwise specifically stated in any such consent, the Assignor will not be released from any responsibility under this Agreement.

**23. OWNERSHIP OF DOCUMENTS**

All drawings, specifications and other documents and electronic data furnished by Sub-Subconsultant to HDR under this Agreement ("Instruments of Service") shall become the property of Owner if required under the Prime Agreement. Sub-Subconsultant hereby grants HDR a license to use the Instruments of Service in connection with performing services under the Subcontract and the Prime Agreement.

**24. SEVERABILITY**

To the extent that any provision of this Agreement is finally adjudged invalid by a court of competent jurisdiction, that provision shall be modified, as necessary, to make it enforceable, and the remaining provisions of the Agreement shall remain in full force and effect and be binding upon the parties hereto.

**25. EQUAL EMPLOYMENT AND NON-DISCRIMINATION**

In connection with the services under this Agreement, Sub-Subconsultant agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity for individuals based on color, religion, sex, or national origin, or disabled veteran, recently separated veteran, other protected veteran and armed forces service medal veteran status, disabilities under provisions of executive order 11246, and other employment, statutes and regulations, as stated in Title 41 Part 60 of the Code of Federal Regulations § 60-1.4 (a-f), § 60-300.5 (a-e), § 60-741.5 (a-e). Sub-Subconsultant may be required to file reports, etc. in accordance with the regulations.

**26. ETHICS**

HDR has adopted a Third Parties' Code of Business Conduct ("Code of Conduct"), which is available at the following link:

<https://www.hdrinc.com/sites/default/files/inline-files/hdr-third-parties-code-business-conduct.pdf>.

Sub-subconsultant and any of its subconsultants are obligated to comply with the Code of Conduct, including but not limited to, reporting any violations and cooperating with any investigations into a violation or potential violation and allowing HDR the right to audit Subsubconsultant's compliance with the Code of Conduct.

## 27. SURVIVAL

The terms and conditions of this Agreement regarding indemnification, insurance, record keeping, and any other provision allocating responsibility or liability between the parties hereto, shall survive the completion of the services under this Agreement and the termination of this Agreement for any cause.

This Agreement is hereby executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

_____ "SUB-SUBCONSULTANT"	HDR ENGINEERING, INC. "HDR"
BY: _____	BY: _____
NAME: _____	NAME: _____
TITLE: _____	TITLE: _____
ADDRESS: _____ _____	ADDRESS: _____ _____
TELEPHONE: _____	TELEPHONE: _____



## **SUB-SUBCONSULTANT AGREEMENT ATTACHMENT A**

### **SCHEDULE OF CONTRACT DOCUMENTS**

The Subcontract by and between HDR and Prime Consultant dated \_\_\_\_\_, 20\_\_ is available to Sub-Subconsultant and is incorporated into this Agreement.

The Prime Contract by and between Prime Consultant and Owner dated \_\_\_\_\_, 20\_\_ is available to Sub-Subconsultant and is incorporated into this Agreement.

The Site Access Agreement by and between the Port of Stockton and Owner dated \_\_\_\_\_, 20\_\_ is available to Sub-Subconsultant and is incorporated into this Agreement.

**SUB-SUBCONSULTANT AGREEMENT ATTACHMENT B**

**DESCRIPTION OF SUB-SUBCONSULTANT'S SERVICES**

**AND**

**TIME FOR PERFORMANCE**

Sub-Subconsultant shall provide written (weekly) (biweekly) (monthly) status reports to HDR on Sub-Subconsultant's services to report actual versus scheduled progress on identified tasks.

## **SUB-SUBCONSULTANT AGREEMENT ATTACHMENT C**

### **BASIS OF COMPENSATION**

In accordance with provisions of this Agreement, HDR agrees to compensate Sub-Subconsultant as follows: