



CONTRACTOR NAME: Arning Construction, Inc.

ADDRESS: 201 Industrial Park Place, Cassville, MO

PHONE NO: 800-732-5074

DATE:

SUBCONTRACTOR:

ADDRESS:

PHONE NO:

DATE:

PROJECT NAME/PROJECT NUMBER:

LOCATION:

Subcontract Amount:

This construction agreement (the "Subcontract" or "Agreement") is made and entered into effective the date fully executed below by and between "_____"
whose current address _____
and Arning Construction, Inc. ("_____") whose current
address is 201 Industrial Park Place, Cassville, MO (_____).

The Contractor and the Subcontractor agree as follows:

ARTICLE 1 – THE CONTRACT DOCUMENTS

The contract documents consist of this Subcontract and any Exhibits attached hereto, the agreement between the Contractor's customer (the "Customer") and Contractor (the "Contract"), including without limitation, the Conditions (General, Supplementary, and other Conditions), the Drawings, the Specifications, all Exhibits referenced herein, and all Addenda issued prior to and after execution of the Contract (the "Contract Documents"). These documents combined with this Agreement shall form the Subcontract and are as fully a part of the Subcontract as if attached to this Subcontract or repeated herein. Copies of the Contract Documents with financial information redacted which are applicable to the work under this Subcontract shall be furnished to the Subcontractor upon its request and upon payment of duplication costs. Terms and conditions provided by Subcontractor on any invoice or proposal shall not limit, affect or modify this Subcontract or the Contract Documents. If there are any provisions of the Contract Documents that are inconsistent with, or ambiguous when interpreted with, any provision herein, the terms within this agreement shall govern and control. Furthermore, nothing in the Contract Documents should be construed to limit, affect or diminish the contingent payment provisions contained in this agreement. To the extent any other direct conflict or inconsistency between any of the Contract Documents is discovered by the Subcontractor, the Subcontractor shall submit a Request for Information ("RFI") to the Contractor within **24 hours** of such notice.

ARTICLE 2 – THE WORK

Subcontractor is an independent contractor and not an employee of the Contractor. Subcontractor shall furnish all supervision, labor, materials, shop drawings, tools, scaffolding, transportation, equipment, incidentals, samples, and submittals in accordance with the Contract Documents necessary for the completion of those portions of the Project

identified in Exhibit A – Scope of Work (the "Work"). All Work must meet or exceed all local and state requirements. Subcontractor agrees to perform work in a safe and proper manner and hold the Contractor harmless against all penalties for violating governing ordinances. Subcontractor shall submit to Contractor any and all shop drawings, product data, samples or other submittals required by the Contract Documents (upon demand by Contractor). Subcontractor shall submit proposed delivery schedules for Contractor's approval, so as not to impede or disrupt the work or schedule of Contractor or other subcontractors. All conflicts, differences and discrepancies between Subcontractor's drawings or specifications and the Contract Documents shall be clearly highlighted, noted in writing, and brought to the attention of the Contractor immediately. Work performed with knowledge of conflicts will be the sole responsibility of the Subcontractor, and Subcontractor shall be solely liable for the costs to correct same.

Prior to the first date on which Subcontractor commences the Work, Subcontractor shall furnish to Contractor a copy of Subcontractor's applicable (1) County Occupational License; (2) State or County certifications and/or registrations evidencing Subcontractor's license to perform the Work; and (3) certificate(s) of insurance evidencing that Subcontractor is complying with the Workers' Compensation and Public Liability insurance laws of Missouri. The certificates of insurance must state that the insurance company will notify the Contractor in writing 30 days before any material changes or cancellation is made.

ARTICLE 3 – TIME OF COMPLETION

Subcontractor must submit to Contractor a written estimate of the number of days required to substantially complete the work identified in Exhibit A – Scope of Work. Subcontractor hereby represents that it has taken into consideration and made allowances for all hindrances and delays in its written estimate. Contractor reserves the right to reject Subcontractor's written estimate. Subcontractor shall resubmit a revised written estimate upon request of Contractor. Subcontractor shall commence its work in accordance with Contractor's Project schedule, or when directed by verbal or written notice from the Contractor. **Time is of the essence in this Subcontract.** No extension of time will be made unless the Contractor has provided written consent after claim made by the Subcontractor in accordance with the claim and notice provisions in the Contract Documents.

ARTICLE 4 – CHANGES IN THE WORK

The Subcontractor may be ordered by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of such Subcontract consisting of additions, deletions, or other revisions. The Contract Sum and the Contract Time for such revised Work shall be adjusted in a manner consistent with the Contract Documents. Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to Contractor written copies of any claim for adjustment to the Contract Sum or Contract Time for such revised Work.

No alteration, addition, omission, or change shall be made in the Work, except upon the written change order of Contractor. Any change or adjustment in the Contract Sum or schedule by virtue of such change order shall be specifically stated in said change order. Prior to the issuance of any change order, Subcontractor shall furnish to Contractor a detailed breakdown showing the difference in the schedule and in the value of the work, labor, services, and materials, altered, added, omitted, or changed by the proposed change order. Unless and until Contractor approves the proposed change order in writing, Subcontractor shall be under no duty or obligation to perform or carry out such proposed change order and Contractor shall be under no duty, obligation, or liability to pay any increase in the Contract Sum or provide additional contract time as a result of such proposed change order. If an agreement as to the amount or other term of a change order cannot be reached, Contractor may issue a written directive to Subcontractor that Subcontractor is to perform the work as detailed within the written directive. Subcontractor shall be compensated, upon the production of adequate evidence in a form acceptable to Contractor for the direct labor and material costs, plus 10% overhead and profit, incurred in the execution of the work detailed in the written directive.

ARTICLE 5 – THE CONTRACT SUM

The Contractor shall pay the Subcontractor in current funds for the performance of the work, subject to additions and deductions authorized pursuant to the Contract Documents, the sum of \$_____ (the "Contract Sum"). Prior to the submittal of the first application for payment, Subcontractor shall furnish a breakdown of the Subcontract Price for Contractor's approval. The breakdown shall show as nearly as possible the true value of each phase of Work in relation to the actual Contract Sum, and separate figures shall be shown for labor and materials, with overhead and profit prorated to each. The approved breakdown will be used only for the purpose of making partial payment estimates. To the extent that there is a conflict between the terms of a proposal or any other provision in any Contract Document and Article 5 of the Subcontract, Article 5 governs. Nothing in the Contract Documents shall be construed to limit, affect or negate the contingent payment arrangement contained herein.

ARTICLE 6 – PAYMENT

Progress payments will be made as the work progresses, unless otherwise provided in the Contract Documents. In no event will the Subcontractor be paid in excess of the Contract Sum, as modified by approved written change orders.

By the 25th day of each month, and at least five (5) days prior to the date Customer requires Contractor to submit its partial payment estimate, whichever is first, Subcontractor must submit to Contractor an acceptable written application for payment, on a form approved by Contractor, for the percentage of work completed to date less (1) 10% retainage, (2) previously received payments, (3) deductions for materials and/or services furnished by the Contractor to or on behalf of the Subcontractor, and (4) any other change orders or deductions as provided for in the Contract Documents. Payment applications not received by the Contractor by the 25th day of the month shall be included on the next month's payment application. The Contractor shall include in its request to Customer for partial payments the partial payment estimate of Subcontractor. Unless otherwise provided herein, Contractor shall make partial payments to Subcontractor within ten (10) business days following Contractor's receipt of payment from Customer for work performed by Subcontractor including changes in the work performed pursuant to the Subcontract, and Subcontractor shall, in turn and in the same manner, make partial payments to its suppliers and subcontractors upon payment to Subcontractor from Contractor for work performed and materials furnished by said suppliers and subcontractors and to the extent of their respective interests therein. Payment applications must include the following: 1) the original Contract Sum; 2) a list of all change orders with description; 3) the amount requested; 4) the amount paid to date; and 5) the remaining amount owed under the contract.

The Subcontractor warrants that upon receiving said progress payments that it has paid for all materials, equipment and labor used in connection with the performance of the Subcontractor's work incurred by the Subcontractor through the period covered by previous payments received from the Contractor. Further, the Contractor shall be entitled to request satisfactory evidence of proof of payment by the Subcontractor to verify its compliance with the aforementioned requirements before any payment is due from the Contractor to the Subcontractor. Material paid for under any such progress payments shall belong to the Contractor, but shall remain in the care, custody and control of the Subcontractor and stored on the jobsite at the Subcontractor's own risk. **NOTWITHSTANDING ANY PROGRESS PAYMENT MADE TO SUBCONTRACTOR TO THE CONTRARY, THE CONTRACTOR WILL NOT COMPENSATE THE SUBCONTRACTOR FOR WORK PERFORMED OR MATERIALS PROVIDED WHICH ARE NOT REQUESTED IN THIS SUBCONTRACT OR A CHANGE ORDER PURSUANT TO ARTICLE 4.** Ten percent (10%) of all progress payments shall be withheld and retained by the Contractor until final payment is due to the Subcontractor except that said funds retained by the Contractor shall be reduced when and to the same extent the amount withheld by the Customer to the Contractor is correspondingly reduced.

All applications for payment submitted by the Subcontractor to the Contractor must also be accompanied by the Contractor's approved form of Partial Release and Partial Lien Waiver or Final Release and Lien Waiver as applicable, which lien releases and lien waivers must be signed by an officer or authorized signatory of the Subcontractor and notarized by a notary public. With the application for payment submitted by the Subcontractor, the Contractor may also require Subcontractor to provide a full and complete release of all claims and causes of action Subcontractor may have or claim to have against Contractor through the date of the execution of said release, save and except for those claims which Subcontractor shall specifically list on said release and describe in a manner sufficient for Contractor to identify such claim or claims with certainty in the form dictated by Contractor. The Contractor shall be under no obligation to make

any progress payments as outlined herein should the Subcontractor fail or refuse to submit the aforementioned lien releases and lien waivers.

Unless otherwise provided herein, Contractor shall make partial payments to Subcontractor within _____ **business days** following Contractor's receipt of payment from Customer for Work performed by Subcontractor including changes in the Work performed pursuant to the Subcontract, and to the extent of Subcontractor's interest therein and Subcontractor shall, in turn and in the same manner, make partial payments to its suppliers and subcontractors upon payment to Subcontractor from Contractor for Work performed and materials furnished by said suppliers and subcontractors and to the extent of their respective interests therein. Subcontractor shall earmark all payments made to its subcontractors and suppliers by identifying the Project referenced in this Subcontract and including language on its remittances which limits the application of its payments to outstanding balances on the Project referenced in this Subcontract. All funds paid to Subcontractor shall be treated as trust funds and Subcontractor shall first pay its subcontractors and suppliers on this Project before using its progress payments for any other purpose.

Notwithstanding anything to the contrary appearing herein, in the contract between Customer and Contractor, or any other Contract Document, Subcontractor, as a condition precedent, shall not be entitled to receive any progress payment or final payment prior to Contractor's actual receipt of that payment from Customer. Subcontractor agrees that Contractor's actual receipt of payment from Customer for the work (labor, materials, and/or services) performed by Subcontractor shall be a condition precedent to the bringing of any action by Subcontractor hereof against Contractor or its Surety, if any, relating to Contractor's failure to make payment. Subcontractor further agrees that its full performance of this Subcontract shall not constitute an exception to the provisions of this Article. The Contractor may require of Subcontractor satisfactory evidence as to the status of its accounts at any time, including a notarized statement setting forth the names of all its subcontractors and suppliers, the amounts of each such subcontract and purchase order, the amount paid and the amounts due and payable.

Progress Payments due under this Subcontract will not be released until all of the following conditions precedent have been met: (1) this Subcontract Agreement has been signed, returned and approved, (2) all Insurance Certificates, including Workman's Compensation Insurance, and W-9 form(s) satisfying the requirements stated in the Subcontract have been received by Contractor, (3) Subcontractor has prepared and presented to Contractor, for its approval, a progress payment estimate and other documents required by and in accordance with this Article, (4) Certified payrolls, if requested by Contractor or if applicable to the Project, have been received by Contractor in the form and content required by the Contract Documents; Subcontractor agrees to provide Contractor with evidence satisfactory to Contractor showing payment by Subcontractor of any and all contributions made by Subcontractor for health and welfare payments as shown on the certified payroll as well as payment of payroll taxes and other contributions which may be required by law, (5) payment for Subcontractor's work has been received by Contractor from Customer and (6) release of lien/bond and waivers of claim in the form provided by Contractor from all tier subcontractors and materialmen evidencing payments through the previous month, if required by Contractor. Subcontractor agrees that Contractor shall retain from the amount due Subcontractor ten percent (10%) retainage until satisfaction of all conditions precedent to final payment as identified herein. Ten percent (10%) of all progress payments shall be withheld and retained by the Contractor until final payment is due to the Subcontractor except that said funds retained by the Contractor shall be reduced when and to the same extent the amount withheld by the Customer to the Contractor is correspondingly reduced.

In addition, Contractor may withhold from monthly progress payments an amount sufficient to protect Contractor because: (1) defective work has not been remedied; materials have not been furnished; off-site fabrication of materials is not meeting production quotas or quality standards; clean-up has not been performed.

(2) Subcontractor has damaged any portion of the work of others; (3) claims, levies, attachments, stop notices or court orders have been filed or reasonable evidence indicates probable filing of such claims, levies, attachments, notices or orders, including claims covered by insurance until such claims are accepted by the insurance carrier; (4) it is alleged that Subcontractor has failed to make payments properly to its subcontractors or for labor (including fringe benefits), materials or equipment, transportation or shipping costs, taxes, fees or any other claims arising out of Subcontractor's work or Subcontractor fails or refuses to produce proof requested by Contractor that such payments have been made; (5) there exists reasonable doubt that Subcontractor's work can be completed for the unpaid balance of the Subcontract Price; (6) there exists reasonable doubt that Subcontractor's work will be completed on schedule or in compliance with the schedule;

(7) Subcontractor is not satisfactorily prosecuting the work of this Subcontract; (8) Subcontractor has failed to deliver current insurance certificates, "as built" drawings, written guarantees or warranties or the approvals required of Subcontractor's work by any authority having jurisdiction; (9) a petition for bankruptcy or reorganization has been filed by or against Subcontractor or Subcontractor has made an assignment without the prior written consent of Contractor, as set forth in the Subcontract ; (10) any other material breach of this Subcontract by Subcontractor which has not been cured after reasonable notice from the Contractor thereof;

(11) Subcontractor fails to produce a mock-up of its work acceptable to Customer (if required) or Subcontractor fails to provide workmanship of the quality approved by the Customer in a mockup.

Amounts as are then due shall be paid or credited to Subcontractor when Subcontractor removes the above grounds for withholding payment. Contractor may withhold amounts otherwise due under this Subcontract any other agreement between the parties to cover Contractor's reasonable estimate of any costs or liability Contractor has incurred or may incur for which Subcontractor may be responsible under this Subcontract or any other agreement between the parties. For purposes of this Article the phrase "any other agreement between the parties" shall be deemed to include any agreement between Subcontractor and Contractor or any joint venture or other entity in which Contractor and/or Subcontractor have a customership interest. Contractor reserves the right to issue joint checks to Subcontractor and its material suppliers, sub-subcontractors, labor unions, equipment suppliers, etc. if, in Contractor's sole judgment, it is necessary to do so to ensure payment to the above-named parties or if above named parties have filed a notice of non-payment, lien or intent to lien, stop notice, etc.

All conditions of this Subcontract which apply to partial payments shall also apply to final payments. Request for final payment must be accompanied by written acceptance of Customer, if requested, and a release of Contractor of all claims arising by virtue of this Subcontract and an affidavit by Subcontractor that all labor, material and other bills have been paid. Final payment by Contractor shall not be construed as acceptance of defective work or improper materials. It is further understood that receipt of any written guarantees, warranties or necessary brochures and data in the required amounts, "as built" drawings, O&M manuals, and if requested by Contractor in its sole discretion, a consent of Surety with power of attorney from Subcontractor's Surety consenting to final payment, shall be conditions precedent to the making of such final payment by Contractor to Subcontractor.

In addition to the other conditions stated herein, final payment shall be due only after all of the following conditions precedent have occurred: (i) the completion of all work related to the Project, (ii) acceptance by the Customer, (iii) compliance by the Subcontractor with all obligations outlined in this Subcontract , (iv) receipt by the Contractor of final payment from the Customer, (v) receipt by the Contractor of a final application for payment submitted by the Subcontractor to the Contractor within sixty (60) days following the date of substantial completion of the Subcontractor’s scope of work as outlined below (which final application for payment shall clearly summarize any unpaid portion of the Contract Sum including any unpaid retention, as referenced in Article 6 herein, that remains outstanding and payable to the Subcontractor as of the date of issuance of the Subcontractor’s final application for payment), and (vi) receipt by the Contractor of all lien releases and lien waivers outlined herein.

Due to the nature of Contractor’s business, failure of Subcontractor to submit to Contractor a final application for payment within sixty (60) days following the date of substantial completion of the Subcontractor’s scope of work as outlined below will constitute an IRREVOCABLE WAIVER OF SUBCONTRACTOR’S RIGHTS TO ANY FUTURE PAYMENT(S)

ARTICLE 7 – INSURANCE

The Subcontractor shall procure at its own expense, and maintain for the duration of any Subcontract, such insurance that will protect both the Contractor and the Subcontractor from any and all claims for personal injury, death, property damage, workers’ compensation and any and all other risks arising from or in any way relating to the performance of the work whether the result of such acts or omission of the Contractor or Subcontractor or otherwise, for which insurance protection is commercially available, including any and all claims by the Subcontractor’s employees. Subcontractor should sublet, assign, or transfer any portion of the work to a third party, the Subcontractor shall see that the third party shall obtain all insurance required of Subcontractor herein prior to commencement of any work by the third party.

Subcontractor shall deliver to Contractor, before the commencement of the work under this Subcontract, two (2) copies of a certificate of insurance listing Contractor as the certificate holder and as an additional named insured for general liability and certifying the insurance coverage set forth and required by the Contractor’s contract with Customer or as indicated below (if indicated), whichever is greater, indicating that the insurance is in full force and effect and further certifying that these policies will not be canceled during the performance of the work unless and until Contractor is given **thirty (30) days** advance written notice of the cancellation. Said certificate of insurance shall show an endorsement added to the policies reading substantially as follows:

“The policies herein referred to are not cancelable or subject to a reduction of coverage by the Insurer unless and until **Arning Construction, Inc.** has received **thirty (30) days** advance written notice as evidenced by return receipt or registered or certified letter.”

The limits of coverage for the Subcontractor shall be as follows:

- | | |
|---------------------------------|--|
| 1. Worker’s Compensation | -Statutory Limits
-\$1,000,000 Employer’s Liability |
| 2. Commercial General Liability | |
| a) Bodily Injury | -\$1,000,000 Each Occurrence
-\$2,000,000 Aggregate |

- b) Property Damage - \$1,000,000 Each Occurrence
- \$2,000,000 Aggregate
3. Comprehensive Automobile Liability
 - a) Bodily Injury - \$1,000,000 Each Occurrence
 - b) Property Damage - \$1,000,000 Each Occurrence
4. Excess Liability – Umbrella Policy - \$2,000,000
5. Name **Arning Construction, Inc.** as an additional insured including Products & Completed Operations exposure on all policies.
6. Include a Waiver of Subrogation for Workers Compensation.
7. Any other insurance required by Contractor's Customer

The Commercial General Liability and Comprehensive Automobile policy shall provide coverage on an “occurrence” basis.

It shall be an additional condition precedent to the receipt of any payment under the terms of this Subcontract whether interim or final that a proper certificate of insurance, as outlined above be possessed by Contractor covering the work. The Contractor and Subcontractor waive all rights against each other and against Customer (and the owner of a Project if different than the Contractor's Customer), the Architect/Engineer, separate contractors and all other subcontractors for damages caused by fire or other perils to the extent covered by property insurance provided under the General Conditions, except such rights as they may have to the proceeds of such insurance. Subcontractor waives all subrogation rights against Contractor and any of its employees or agents to the extent covered by insurance.

ARTICLE 8 – SUBCONTRACTOR RIGHTS AND RESPONSIBILITIES

The Subcontractor shall be bound to the Contractor by the terms of this Subcontract and to the extent that provisions of the Contract Documents between Customer and Contractor apply to the work of the Subcontractor, the Subcontractor shall assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents assumes toward Customer and the architect/engineer, and Subcontractor shall have the benefit of all rights, remedies, and redress against the Contractor which the Contractor, by those Documents, has against Customer, provided that where any provision of the Contract Documents between Customer and Contractor is inconsistent with any provision of this Subcontract, this Subcontract shall govern. Furthermore, nothing in this Article should be construed to limit, affect or diminish the contingent payment provisions contained in the Subcontract. Should inconsistencies or omissions appear in the Contract Documents, it shall be the duty of the Subcontractor to so notify the Contractor in writing within **three (3) calendar days** of the Subcontractor's discovery thereof.

ARTICLE 9 – EXECUTION AND PROGRESS OF THE WORK

Safety equipment, including, but not limited to, harnesses, anchors, ropes, rope grabs, lanyards, retractable, safety glasses, hardhats, ear protection, and gloves shall be the sole responsibility of Subcontractor. Subcontractor shall independently equip its employees with all the required PPE mandated by OSHA. Contractor shall not be responsible for any training, upkeep, or inspections of any safety equipment belonging to the Subcontractor. The Subcontractor shall not, under any circumstances, utilize the Customer's tools, equipment, trash containers, bathrooms, facilities, or property without express written consent from the Contractor.

The Subcontractor shall cooperate with the Contractor in scheduling and performing Subcontractor's work to avoid conflict or interference with the work of others and shall diligently and continuously prosecute such work in an efficient fashion so as not to cause delay in the progress of Contractor's work or in any other portions of the Project carried on by other subcontractors. Subcontractor shall coordinate its Work with the work being performed on the Project by other trades so that Contractor shall not be delayed due to any act or omission of Subcontractor. The Subcontractor shall promptly submit shop drawings and samples required in order to perform its work efficiently, expeditiously and in a manner that will not cause delay in the progress of the work of the Contractor or other subcontractors.

Subcontractor shall take all necessary action to assure the completion of the Project within the time specified in the Contract Documents. If Subcontractor is responsible for any delay in the time and sequence of the Project schedule, Subcontractor shall at its own expense, perform any overtime work necessary to bring its work back on Project schedule. Contractor may at any time direct Subcontractor to perform additional overtime work to bring its work back on Project schedule. If Subcontractor is responsible for a delay in the time and sequence of the Project schedule, Subcontractor shall pay Contractor for all costs and damages suffered by Contractor as a result of such delay including any damages assessed against the Contractor by the Customer.

The Subcontractor shall furnish periodic progress reports on the work when requested by Contractor, including information on the status of materials and equipment under this Subcontract which may be in the course of preparation or manufacture. The Subcontractor agrees that all work shall be done subject to the final approval of the Contractor, not the architect/engineer, however, the architect/engineer's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents.

The Subcontractor shall pay for all labor, portable toilets, debris removal and disposal, and other items as required by the Contractor used in, or in connection with, the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements. Subcontractor understands that it is an independent contractor. Contractor shall not be responsible for or, liable to, any employee of the Subcontractor for payroll, timesheets, or any issues pertaining to wage and hour, insurance, or employee benefit programs. Subcontractor warrants that all employees shall be paid in conformance with all State and Federal regulations pertaining to fair wages, workers compensation coverage, and any other required employee benefits. Specifically, Subcontractor agrees that all its employees shall receive an appropriate wage pursuant to the Fair Labor Standards Act (29 U.S.C. § 201-219) and that all employees are properly covered with the minimum insurance requirements as required by the applicable jurisdiction.

ARTICLE 10 – LAWS, PERMITS, FEES AND NOTICES

The Subcontractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the work under this Subcontract. The Subcontractor shall comply with Federal, State and local tax laws, social security acts, and unemployment compensation acts insofar as they are applicable to the performance of this Subcontract.

All written notices as provided for herein shall be deemed served if hand delivered, or deposited with the U.S. Postal Service, Certified, Return Receipt Requested, or such private overnight mail service providing a receipt of delivery, addressed to Contractor and Subcontractor as follows:

Contractor Contact:

Company Name: Arning Construction, Inc.

Project Manager:

Telephone Number:

Email:

Subcontractor Contact:

Company Name:

Project Manager:

Telephone Number:

Email:

ARTICLE 11 – WORK OF OTHERS

In carrying out its work, the Subcontractor shall take necessary precautions to protect properly the finished work of other trades from damage caused by its operations. The Subcontractor shall cooperate with the Contractor and other subcontractors whose work might interfere with the Subcontractor's work and shall participate in the preparation of coordinated drawings in areas of congestion, specifically noting and advising the Contractor of any such interference.

ARTICLE 12 – SAFETY PRECAUTIONS AND PROCEDURES

Subcontractor is to complete the work in a safe and expeditious manner. If requested by Contractor, Safety MSDS sheets must be submitted, and a copy kept on the Project site for all work related to the Subcontractor's work. The Subcontractor shall take all reasonable safety precautions with respect to his work, shall comply with all safety measures and with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property in accordance with the requirements of the Contract Documents. The Subcontractor shall report within **twenty-hour (24) hours** to the Contractor any injury to any of the Subcontractor's employees at the site. Subcontractor shall abide by all OSHA reporting requirements for serious injury including hospitalization, loss of eye, amputation or death. Subcontractor shall indemnify, hold harmless and defend Contractor for all costs, expenses and liability incurred as a result of Subcontractor's failure to comply with applicable safety laws, rules, regulations and orders, including without limitation, any OSHA violation.

At all times while under the control and supervision of the Subcontractor, the employees of Subcontractor shall be required to follow the safety rules, regulations and procedures instituted by Subcontractor, Contractor or any other contractor on the Project and shall comply with all safety requirements identified in the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 651 et seq., as amended ("OSH Act"). Subcontractor and not Contractor shall be solely responsible for all initial and subsequent safety training of Subcontractor's employees, and Contractor is not responsible for any aspect of Subcontractor's safety training. Subcontractor shall be solely responsible and liable for executing the work in a safe and prudent manner, for establishing safety procedures, for protecting all of the Subcontractor's workers and the public from property damage and/or injury during the performance of work and shall be named as at fault party should incident or violation extend from Subcontractor's work or unsafe practice. Subcontractor shall be specifically responsible and liable for all aspects of its use of the workspace jointly used by different contractors and subcontractors, and Subcontractor acknowledges and agrees that Contractor does not retain supervisory control of such joint use areas for purposes of liability for unsafe conditions.

Subcontractor understands and acknowledges that Subcontractor shall control and implement all required safety procedures, and that Contractor shall only perform occasional inspections to determine conformance with the plans and specifications for the Project. As a result, Contractor shall not be able to ensure Subcontractor adherence to safety standards and the OSH Act because Contractor cannot reasonably be expected to prevent, detect or abate violative conditions by reason of its limited role on the Project. Therefore, Subcontractor shall be solely responsible for controlling safety on the jobsite as it relates to Subcontractor.

ARTICLE 13 – CLEANING UP

The Subcontractor shall at all times keep the premises free from accumulation of waste materials or rubbish arising out of the operations of this Subcontract. The Subcontractor shall, upon twenty-four (24) hours' notice by Contractor, clean up all unsuitable or unsightly work areas. Subcontractor's failure to comply with the foregoing requirement will result in a back-charge to Subcontractor for all costs and expenses incurred by Contractor associated with clean up performed on Subcontractor's behalf. Subcontractor agrees to indemnify, defend, and hold harmless Contractor's Customer, the Project owner, the Architect/Engineer, and the Contractor and all of their agents, officers, directors, and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from Subcontractor's failure to comply with the foregoing clean up requirements.

ARTICLE 14 – WARRANTY

The Subcontractor warrants to the Customer, project owner (if different than Contractor's Customer), the architect/engineer and the Contractor that all materials and equipment furnished shall be new unless otherwise specified, and that all work under this Subcontract shall be of good quality, free from faults and defects and in strict conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The conditions and duration of Subcontractor's warranty for its work shall be coextensive with Contractor's warranty to Customer for that work pursuant to the Contract Documents. Subcontractor's warranty obligations shall not commence until Contractor's work has been accepted by Customer and/or the Customer. In the absence of a more extensive warranty in the Contract Documents, Subcontractor shall remedy, without cost to Contractor or Customer, all defects due to imperfect workmanship or materials which may appear within **one (1) year** from the date of final acceptance. The warranty provided in this Article shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

ARTICLE 15 – CLAIMS BY THE SUBCONTRACTOR

The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time, and damages for delays or other causes in accordance with, and to the extent allowed by, the Contract Documents. Should the Subcontractor be delayed in its work by the Contractor or the other subcontractors of Contractor, then Subcontractor's remedies for such damages resulting therefrom shall be limited to an equitable adjustment to the Contract Time if a written claim for delay is made to the Contractor within **forty-eight (48) hours** from inception of the delay, and accepted by Contractor's Customer and the Project owner (if applicable). If the Contract Documents are silent, Subcontractor shall give Contractor immediate oral notice followed by written notice of all claims for additional time and/or money within **five (5) calendar days** of the claim causing event; otherwise, Subcontractor's claims shall be waived by Subcontractor. Any such claim which will affect or become part of a claim which the Contractor is required to make against Owner within a specified time period or in a specified manner under the Contract Documents shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Contract Documents. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound. Compensation for all claims of the Subcontractor shall be limited to the amount that the Contractor is able to obtain from the Contractor's Customer on behalf of the Subcontractor.

The Contractor agrees that at the request of the Subcontractor, it will present to Contractor's Customer (or the Project owner, if applicable), through the appropriate procedure in the Contract Documents, any just claim for which the Contractor's Customer or Project owner is, or might be, responsible, will cooperate with the Subcontractor in the prosecution of any such claim, and will not settle any such claim without the consent of the Subcontractor, which consent will not be unreasonably withheld. The Subcontractor shall be responsible for the prosecution of any such claim and shall pay all expenses of said prosecution, and it shall be the obligation of the Subcontractor to give the Contractor adequate notice to ensure the Contractor gives all notice required to be given under the Contract Documents with respect to any claims Subcontractor may have relating to or arising from the work.

ARTICLE 16 – CLAIMS BY THE CONTRACTOR

The Subcontractor shall be liable to the Contractor for any and all damages sustained by the Contractor due to improperly performed work, incomplete work, poor workmanship, defective material(s) and/or delays in the prosecution of the work by the Subcontractor. The liability of Contractor to the Subcontractor for delays or other injuries to the Subcontractor due to the acts, neglect, or default of the Customer shall be limited to any amounts which are recovered by the Contractor, in cooperation with the Subcontractor, as provided herein from Customer with respect to delays or other injuries. Except as provided in the preceding sentence, the Contractor shall not be liable to the Subcontractor for delay or other injury caused by reason of fire, or other casualty, or on account of riots, strikes, or other combined actions of workmen or others, or on account of any acts of God, the impacts or limitations arising out of epidemics, pandemics, infectious disease, or any other cause beyond Contractor's control or on account of circumstances caused or contributed to by the Subcontractor. Contractor shall not be liable to Subcontractor for damages incurred due to delays, disruption, or acceleration. Should the Subcontractor be delayed in its work by the Contractor or the other subcontractors of Contractor, then Contractor shall owe the Subcontractor only an extension of time for completion equal to the delay caused, and then only if a written claim for delay is made to the Contractor within **forty-eight (48) hours** from inception of the delay.

ARTICLE 17 – INDEMNIFICATION

To the fullest extent permitted by law, Subcontractor shall defend, indemnify, reimburse and hold harmless the Customer, Contractor, and their agents and employees, as well as any entities or persons which Contractor is required under the Contract Documents to defend, indemnify, reimburse and hold harmless from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees and expenses, arising out of or resulting from performance of the Work under this Subcontract Agreement, including, without limitation, any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including loss of use thereof), caused by, arising out of, resulting from, or occurring in connection with, in whole or in part, the performance of the Work by Subcontractor, its suppliers, subcontractors, vendors, other downstream parties, or their agents, servants, or employees.

Neither party's obligation to indemnify under this provision shall include the obligation to indemnify the other party for that party's own negligence. However, if the contract between the Customer and the Contractor requires the Contractor to indemnify the Customer for the Customer's own negligence, then for that portion of any payments owed to Customer, the Subcontractor shall pay Contractor a pro rata share of the amount paid by Contractor to Customer based on the ratio of the dollar amount of this Subcontract Agreement divided by the dollar amount of the contract between the Contractor and the Customer. The dollar amount of said indemnity obligation shall be limited to a total of ONE MILLION AND NO/100 (\$1,000,000) DOLLARS for all damages, including costs and attorney's fees per occurrence for any single claim or suit. The parties agree that the indemnity required herein bears a reasonable commercial relationship to the Subcontract and is part of the Project specifications or bid documents.

In any and all claims against the Customer, the architect/engineer, or the Contractor or any of their agents or employees by any employee of the Subcontractor, anyone directly or indirectly employed by him or anyone for whose acts he may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 18 – CONTRACTOR RIGHTS AND RESPONSIBILITIES

The Contractor shall be bound to the Subcontractor by the terms of this Subcontract, and to the extent that provisions of the Contract Documents between the Customer and the Contractor apply to the work of the Subcontractor as defined in this Subcontract, the Contractor shall assume toward the Subcontractor all the obligations and responsibilities that the Customer, by those documents, assumes toward the Contractors, and shall have the benefit of all rights, remedies and redress against the Subcontractor which the Customer, by those documents, has against the Contractor. Where any provision of the Contract Documents between the Customer and the Contractor is inconsistent with any provisions of this Subcontract, this Subcontract shall govern.

If the Subcontractor fails to supply enough properly skilled workers, proper materials, maintain the schedule of work, fails to make prompt payment for its workers, sub-contractors or suppliers, disregards laws, ordinances, rules regulations or orders of public authority having jurisdiction, or otherwise is guilty of material breach of a provision of this Subcontract, and fails after receipt of written or oral notice to commence and continue satisfactory correction of such default, then the Contractor, without prejudice to any rights or remedies, shall have the right to any or all of the following remedies:

- Supply such number of workers and quantity of materials, equipment and other facilities as the Contractor deems necessary for the completion of the Subcontractor's work, or any part thereof which the Subcontractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to the Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit, and attorney's fees; and,
- Payment of any monies due to the Subcontractor pending corrective action to the extent required by and to the satisfaction of the Contractor; and,
- In the event of an emergency affecting the safety of persons or property, the Contractor may proceed as above without notice.

All of the costs incurred by the Contractor in so performing the Subcontractor's work, including reasonable overhead, profit, and attorney's fees, shall be deducted from any monies due or to become due the Subcontractor. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract price.

Without the advance written consent of the Contractor, the Subcontractor shall not assign this Subcontract, or further subcontract portions of this Subcontract. The Subcontractor shall not assign any amounts due or to become due under this Subcontract without written notice to the Contractor. Assignment of the work by Subcontractor shall not relieve Subcontractor of responsibility for the work or of liability to the Contractor. Contractor may withhold its consent at its discretion.

ARTICLE 19 – SERVICES PROVIDED BY THE CONTRACTOR

The Contractor shall cooperate with the Subcontractor in scheduling and performing Contractor's work to avoid conflicts or interference in the Subcontractor's work. The Subcontractor shall be notified promptly of any subsequent changes in the progress schedule.

ARTICLE 20 – DEFAULT BY SUBCONTRACTOR AND TERMINATION

Failure by the Subcontractor to fulfill any obligation of this Subcontract or any proposal concerning its scope of work or responsibilities, failure to pay for labor and material and provide proof of such payment on request to the Contractor, payroll taxes, contributions or insurance premiums, interference with the performance of the work of the Contractor or other subcontractors or forces of the Customer for any other reason, or an act of bankruptcy shall each be deemed a breach of this Subcontract. Further, should the Subcontractor breach this Subcontract, the Contractor may terminate the Subcontractor's right to proceed under this Subcontract upon **three (3) days** written notice. Should the Subcontractor fail to correct such default in a timely manner and to the satisfaction of the Contractor in its sole opinion, the Contractor may then undertake to have the Subcontractor's scope of work completed by another subcontractor or by the Contractor's own forces and may use the Subcontractor's material, supplies, tools, and equipment to effect said completion. Subcontractor shall continue to be liable for all costs incurred by the Contractor or the Customer to complete the Subcontractor's scope of work and for any damages and expenses including reasonable attorney's fees, liquidated damages assessed by the Customer or the Contractor and any other liabilities which may result from the default and breach, without waiver of any other rights or remedies available to the Contractor or the Customer, including right of setoff and collection of any funds which may be due to the Subcontractor under agreements for other projects between the Subcontractor and Contractor.

For a breach of this Subcontract by the Subcontractor as a result of default, bankruptcy or a claim by a creditor of the Subcontractor against the Contractor or its surety, or notice of levy involving delinquent taxes, the Contractor shall have the right to withhold payments due to Subcontractor pursuant to this Subcontract or any other agreement between the Contractor and the Subcontractor (including the payments due under different Notices to Proceed) and apply same to secure performance of this Subcontract without prejudice to all other rights and remedies that the Contractor may have against the Subcontractor or its surety.

The Contractor shall have the right to terminate this Subcontract for its own convenience for any reason by giving written notice of termination effective upon receipt thereof by the Subcontractor. Termination for default, if wrongfully made, shall be treated as a termination for convenience. The Subcontractor shall not be entitled to anticipated profits on unperformed portions of the Subcontractor's scope of work. If this Subcontract Agreement is terminated for the Contractor's convenience by Contractor's Customer, then Subcontractor shall only be entitled to recover from Contractor those wind-up costs, damages, overhead, and profits that Contractor is entitled to recover from Contractor's Customer and actually does recover from Contractor's Customer on Subcontractor's behalf. If Subcontractor believes the Contractor to be in breach of this Subcontract, Subcontractor shall give Contractor at least seven (7) days written notice and an opportunity to cure, or such time as is reasonably necessary to cure the alleged breach before declaring the Contractor in default of this Subcontract.

ARTICLE 21 – WAIVER OF JURY TRIAL

EACH PARTY AGREES THAT AS A MATERIAL PART OF THE CONSIDERATION HEREUNDER AND AS AN INDUCEMENT TO ENTER INTO THIS SUBCONTRACT, EACH PARTY HEREBY WAIVES THE RIGHT TO A JURY TRIAL.

ARTICLE 22 – CHOICE OF LAW, VENUE, AND DISPUTE RESOLUTION

This Subcontract shall be governed by the laws of the State of Missouri. Venue of any litigation or arbitration arising out of this Subcontract shall be in the county where the Project is located unless the parties hereto mutually agree otherwise. Should either party employ an attorney to institute litigation or arbitration to enforce any of the provisions hereof, to protect its interest in any matter arising under, arising out of, or related to this Subcontract, the prevailing party shall be entitled to recover from the other party all of its attorney's fees, costs and expenses, incurred therein through trial and/or arbitration, appeals, and any bankruptcy proceeding.

Any dispute or claim made by Subcontractor arising out of or related to this Subcontract shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings. Request for such mediation shall be in writing and served upon the Contractor as provided in the Subcontract. Mediation shall proceed within 30 days of service of the request.

All disputes or claims between Contractor and Subcontractor arising out of or relating to this Subcontract, or performance of any work hereunder shall be decided by litigation unless the Contractor, at its sole options, advises the Subcontractor that Contractor seeks to have the dispute decided or resolved by way of arbitration. In the event the Contractor shall provide the Subcontractor written notice of its election, the Subcontractor shall be bound by the election and the arbitration shall be conducted pursuant to the Construction Industry Arbitration Rules as issued by the American Arbitration Association then in effect. Any such arbitration shall be held in the county where the Project is located unless the parties agree otherwise, and judgment upon the award may be entered by any court having jurisdiction. In the event Contractor is involved in an arbitration proceeding, involving the Subcontractor's work, questions of law or fact common to the Subcontractor's work, or if complete relief cannot be afforded without the Subcontractor's presence in a separate arbitration proceeding, Subcontractor hereby consents to consolidation or joinder to that separate proceeding.

ARTICLE 23- INDEPENDENT CONTRACTOR

The Subcontractor is and will remain for the term of this Subcontract an independent contractor completely responsible for its own acts and for the manner in which and the form by which it performs this Subcontract, and as such shall set its own hours and means and methods and shall not be subject to the supervision and control of the Contractor except as to the results obtained. In no event shall the relationship created by this Subcontract constitute a joint venture or partnership between the Contractor and the Subcontractor. The Subcontractor shall at all times during the terms of this Subcontract remain solely responsible for its costs and expenses, and the withholding and payment of applicable taxes. Neither party is authorized to assume or create any obligation or responsibility on behalf of or in the name of or in the name of the other or bind the other in any manner as an agent, legal representative or otherwise.

ARTICLE 24- FORCE MAJEURE EVENTS

Any failure or delay by a party in the performance of its obligations under this Subcontract is not a default or breach of the Subcontract or a ground for termination under this Subcontract to the extent the failure or delay is due to the elements of nature or Acts of God, acts of war, terrorism, riots, revolutions, pandemics, medical emergencies that have resulted in a local, state or federal state of emergency, Coronavirus (COVID-19) or similar viruses or illnesses requiring quarantine, work stoppage or slowdown in the progress of the work as a result of the ongoing COVID-19 pandemic whether such stoppage or slowdown in the progress of the work is at the direction of a private actor, government entity, or caused by an outbreak related to COVID-19, or any locally, state, or federally declared epidemic or pandemic; strikes or other factors beyond the reasonable control of a party (each, a "Force Majeure Event"). The party failing or delaying due to a Force Majeure Event agrees

to give notice to the other party which describes the Force Majeure Event and includes a good faith estimate as to the impact of the Force Majeure Event upon its responsibilities under this Subcontract, including, but not limited to, any scheduling changes. However, should any failure to perform or delay in performance due to a Force Majeure Event last longer than thirty (30) days, or should three (3) Force Majeure Events apply to the performance of a party during any calendar year, the party not subject to the Force Majeure Event may terminate this Subcontract by notice to the party subject to the Force Majeure Event.

ARTICLE 25 – MISCELLANEOUS PROVISIONS

The partial or complete invalidity of any provision of this Subcontract shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist upon the performance of any of the terms or conditions of this Subcontract or to exercise any rights herein shall not be construed as a waiver or relinquishment of such term or condition or right as respects further performance. This Subcontract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. Any indemnification provision contained herein shall survive the termination of the Subcontract. The headings are for convenience purposes only. This Subcontract is contingent upon the execution of the contract between the Contractor and the Customer. Acceptance of this offer is restricted solely to the terms of this document.

Arning Construction, Inc.:

By:

Name:

As its:

Date:

SUBCONTRACTOR:

By:

Name:

As its:

Date:

EXHIBIT A SCOPE OF WORK

Date:

Project Name:

Project Number:

Total Subcontractor Price:

Scope of Work:

Exclusions:

The following is the agreed upon proposal from Subcontractor for the above-referenced project. All pricing includes labor, materials, equipment, and applicable taxes. Price calculations are based on site visit, site images, and specifications, unless noted otherwise.

Submitted by:

SUB CONTRACTOR

Signature:

Arning Construction, Inc.:

Signature: