**Subcontract No.:**

 **SUBCONTRACT AGREEMENT ESG Project No.:**

 **Project Name:**

This subcontract agreement (this “**Agreement**”) made this       day of       20    between Energy Systems Group, LLC (“**ESG**”) and  ("**Subcontractor**"). Each party to this Agreement shall at times be referred to individually as a “**Party**” and collectively as the “**Parties**”. Subcontractor shall perform the work described in Section 1 (“**Work**”) per the terms of this Agreement and all attachments.

      is the “**Owner**” of the project.

1. SCOPE AND FLOWDOWN REQUIREMENTS. Subcontractor agrees to furnish all labor, materials, equipment, supervision, transportation, and other facilities required to complete the Work in strict compliance with this Agreement and the attachments. If all or a portion of Subcontractor’s proposal or quote is attached to this Agreement, only the portion of the proposal or quote that defines the scope of the Work shall be binding on the Parties. Any other terms and conditions in the proposal or quote shall not be part of this Agreement and shall not be binding on the Parties. If there is a conflict between the terms of this Agreement and the Subcontractor’s proposal, the terms of this Agreement shall control. The Scope of Work is set forth in **Attachment A**.

Subcontractor shall comply with all requirements of the contract between ESG and Owner that flow down to subcontractors and that are listed in **Attachment C**. If there is a conflict between the terms of this Agreement and the obligations as described in **Attachment C**, the inconsistency shall be resolved by an interpretation requiring the most stringent degree of obligation and responsibility to the Owner or to ESG, as the case may be, on the part of Subcontractor. If the Owner is a federal agency, Subcontractor shall fully comply with all federal laws and contract provisions that ESG is required to flow down from the contract between ESG and Owner (the “**Flowdowns**”). Such Flowdowns are listed in the Federal Business Services Addendum found at this link: [https://energysystemsgroup.com/terms/](https://www.energysystemsgroup.com/terms/Federal_Business_Services_Addendum.docx).

1. PRICE. ESG agrees to pay Subcontractor for the performance of its Work in strict compliance with this Agreement, the sum of       Dollars ($     ) subject to adjustments for changes in the Work as ESG may be direct in writing. ESG shall pay Subcontractor in monthly progress payments of 90 percent of labor and material for the Work. ESG will hold       percent retainage until final acceptance. ESG shall make progress payments to Subcontractor only with sums received by ESG from the Owner for Work performed by Subcontractor as reflected in ESG’s applications for payment. In no case shall ESG pay Subcontractor unless Subcontractor provides lien releases for the Work completed covering Subcontractor's Work and all lower tier subcontractors and vendors. ESG’s obligation to pay is specifically conditioned upon ESG receiving from Owner payment for Subcontractor’s Work. ESG may dispute all or any portion of Subcontractor’s invoice and shall pay the disputed portion of any invoice within thirty days of resolution of the dispute. ESG shall pay the undisputed portion per the terms of Section 3. Attachment B reflects the breakdown of the Agreement Price.
2. PAYMENT. Unless otherwise prohibited by law, Subcontractor shall not be entitled to final payment until all Work is completed, all lien releases have been provided and the Owner has accepted the project. Subcontractor agrees to furnish, if and when required by Owner, payroll affidavits, receipts, vouchers, releases of claims for labor and material, and releases from Subcontractor’s subcontractors and vendors. Subcontractor shall also execute appropriate lien releases prior to receipt of any payment in substantially the form provided at the following link: <https://energysystemsgroup.com/terms/> . ESG may, at its option, demand lien releases, payment vouchers, or other releases and/or make any payment or portion thereof directly to any of Subcontractor’s subcontractors or by joint check payable to Subcontractor and any of its subcontractors, suppliers and/or laborers. In the event that ESG elects to issue a joint check, Subcontractor shall submit separate outstanding invoices of its subcontractors, suppliers and/or laborers to ESG with all information necessary for ESG to issue payment. Subcontractor agrees, if practical, to endorse the joint check in person at ESG’s place of business for delivery by ESG to the payee. If an in-person signature is not practical, Subcontractor agrees to execute a limited power of attorney to ESG for paying Subcontractor’s subcontractors, suppliers and/or laborers. In the alternative, Subcontractor agrees to endorse a joint check and promptly deliver it to its subcontractors, suppliers and/or laborers. Failure to endorse and deliver without delay will subject Subcontractor to any set-off rights created by this Agreement or any other agreements between ESG and Subcontractor. A joint check issued by ESG for the benefit of Subcontractor’s subcontractors, suppliers and/or laborers shall be considered property of the sub-subcontractor, supplier or laborer for whose benefit payment is made and not property of Subcontractor.
3. TIME. Time is of the essence for this Agreement. Subcontractor shall provide ESG with scheduling information in a form acceptable to ESG and shall conform to ESG's progress schedules, including any changes made by ESG in the scheduling of Work. Subcontractor shall coordinate its Work with ESG, and all other contractors, subcontractors and suppliers so as not to delay or disrupt their performance.
4. DIRECTION. Unless otherwise authorized by ESG or because of immediate safety concerns, Subcontractor shall take direction only from ESG and not from Owner or other third parties.
5. DELAY. If Subcontractor's Work is delayed for any reason, including acts of ESG or a Force Majeure, defined below, Subcontractor's sole and exclusive remedy shall be an extension of time equal to the period of a delay provided Subcontractor has given ESG written notice of the commencement of delay within 48 hours of the occurrence causing a delay. ESG may, in its sole discretion and at its election, decide to pay Subcontractor extra compensation for delays caused by a Force Majeure. Subcontractor shall not be entitled to an extension of time for delays caused by Subcontractor, or for delays that Subcontractor could have prevented. Subcontractor agrees to reimburse ESG for any losses incurred by ESG because of a delay caused by Subcontractor.

The following constitute force majeure ("**Force Majeure**") events to the extent they are not caused or contributed to by and are beyond the reasonable control of the Subcontractor or other person or entity for whom Subcontractor is responsible: earthquake, hurricane, tornado, flood or other unusually severe weather condition; fire; civil unrest or terrorist act; war; damage or disruption committed on behalf of any foreign interests to further international political objectives; injunction in connection with litigation; epidemic or quarantine restrictions; acts of God or the public enemy; failure by someone other than the Subcontractor or anyone for whom the Subcontractor is responsible to obtain or issue, as applicable, any permits needed for the Work to be completed; and any other severe and adverse weather conditions beyond those reasonably anticipated as of the effective date of this Subcontract.

Subcontractor will be granted an extension to complete its Work for delays caused by a Force Majeure. Notwithstanding, Subcontractor must use its best efforts to minimize the time and cost impact of delays, regardless of cause, and must cooperate with ESG to mitigate the impact of any delays encountered by Subcontractor that would entitle it to an extension of time, even if its performance is unreasonably delayed by ESG or the Owner.

1. CHANGES IN WORK. ESG may direct Subcontractor, in writing, and without invalidating this Agreement, to make changes in the Work within the general scope of this Agreement, including additions, deletions or revisions. The price specified in Section 2 shall be adjusted proportionately for any changes in the Work. Subcontractor shall make no changes in the Work without written direction from an authorized ESG agent. If Subcontractor believes any written direction from ESG or any other direction from ESG constitutes a change, the Subcontractor shall provide written notice within ten days following such direction. ESG shall not compensate Subcontractor for any change made without written direction by an authorized agent from ESG. No changes in the Work shall exonerate any surety or any bond given in connection with this Agreement. Any changes in the Work, which are not in accordance with this Agreement, shall be considered non-conforming and Subcontractor shall repair or replace such Work at no additional cost to ESG.
2. CLAIMS. If any dispute shall arise between ESG and Subcontractor regarding Work performed under this Agreement, Subcontractor shall timely perform the disputed Work and shall give written notice of a claim for additional compensation or time for the Work within ten days after commencement of the disputed Work. Subcontractor's failure to give written notice within the ten-day period constitutes an agreement by Subcontractor that it will receive no extra compensation for the disputed Work.
3. INSPECTION AND PROTECTION OF WORK. Subcontractor shall make the Work accessible at all times for inspection by ESG. Subcontractor shall, at the first opportunity, inspect all material and equipment delivered to the job site by others to be used or incorporated in the Work and give prompt notice of any defects found. Until final acceptance of the Work by the Owner or ESG, Subcontractor shall reasonably protect and bear the risk of loss for damage or destruction of the Work and all materials and equipment delivered to the job site that will be utilized in its Work to the extent such damage or destruction is caused by Subcontractor’s negligence or actions. Subcontractor shall promptly repair or replace such Work, material and/or equipment damaged prior to final acceptance by the Owner or ESG at no additional cost to ESG.
4. SUBSTANTIAL AND FINAL COMPLETION. Subcontractor shall notify ESG that it has reached substantial completion and certify the Work is fully complete, ready for inspection, ready for beneficial use, and compliant with this Agreement and attachments and addendums, as applicable. ESG will inspect the Work and provide Subcontractor with a punch list of incomplete, noncompliant, or defective Work. Subcontractor will then immediately remedy the punch list items and notify ESG again for ESG’s inspection. Once ESG and Owner have accepted the Work as complete and all punch list items are remedied, ESG will give Subcontractor a final completion notification. Subcontractor shall continue to repair and hold ESG and Owner harmless regarding any defects or deficiencies in the Work. Substantial completion and final completion dates are listed on **Attachment A**.
5. LABOR RELATIONS. Subcontractor shall maintain labor relations policies that comply with all of the terms and conditions, including trust fund contributions, of the applicable labor agreements, if any, to which it is signatory.
6. DEFICIENCIES. If Subcontractor fails to rectify any contractual deficiencies, including failure to pay its creditors, ESG shall have the right to take whatever steps it deems necessary to correct said deficiencies and backcharge the cost thereof to Subcontractor, who shall be liable for the full cost of ESG’s corrective action, including reasonable overhead, profit and attorney’s fees.  Subcontractor shall have a period of seven working days to correct any deficiencies after ESG notifies Subcontractor of such deficiencies. In the event it is not commercially feasible to provide seven working days’ notice to correct deficiencies, then ESG will provide a minimum of three working days to correct deficiencies.  If Subcontractor fails to correct deficiencies during the time provided by ESG, then ESG may self-correct, or hire a third party to correct, the deficiencies and Subcontractor shall be responsible for the reasonable value thereof.
7. TERMINATION. ESG may in its sole discretion, with or without cause, cancel and terminate this Agreement and/or all, or a portion of the Work at any time upon giving three days advance written notice. Upon receiving notice of termination, Subcontractor shall discontinue the Work on the date and to the extent specified in the notice, shall remove all equipment and materials owned by it from Owner's premises within three days of receipt of the notice of termination, and shall place no further orders for material, equipment, services or facilities except as needed to continue any portion of the Work which was not terminated.

Upon receipt of notice of termination, Subcontractor waives all claims for damages, including, but not limited to, loss of anticipated profits, idle equipment, labor and facilities, and claims of other subcontractors and vendors. Solely in the event of ESG’s termination of this Agreement without cause, Subcontractor hereby accepts the following as sole and complete compensation: ESG shall pay to Subcontractor all sums owed to Subcontractor pursuant to the Agreement for work performed through the date the notice of termination is received by Subcontractor. In such event, ESG shall also pay Subcontractor the reasonable out-of-pocket expenses actually incurred by it in removing its equipment and material from Owner's premises.

If it is determined, by litigation, arbitration or otherwise, that termination for cause was unjustified for any reason, the termination shall be deemed a termination for convenience and Subcontractor’s remedies shall be limited to those provided for a termination for convenience.

1. INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS ESG, OWNER AND THEIR AGENTS AND EMPLOYEES from any claims, demands, or liability of any kind or nature for injuries, damages (including attorney fees), losses, expenses, liens, fines, liquidated damages or other claims of any type, growing out of the performance of this Agreement or arising in any manner, ways or means from any products supplied or activity required under this Agreement, unless such claim, demand or liability results from the sole negligence of ESG, Owner, or others for whom Subcontractor is not legally responsible. If Subcontractor is only partially liable for such claim, loss or damage, liability shall be reduced on a pro rata basis. This indemnification shall extend to claims occurring after this Agreement is terminated as well as while it is in force. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.
2. INVOICING. An invoice detailing the agreed upon schedule of values, along with lien waivers, shall be delivered to 9877 Eastgate Court, Newburgh, IN 47630 or (preferably) emailed to ap@energysystemsgroup.com. Every package, bill of lading, delivery ticket and invoice must be marked with the subcontract number and job number. **All invoices must be received by the twentieth of every month in order to be processed for payment.** Any invoices received after the twentieth will not be processed until the twentieth of the following month and will be paid according to the date it was processed. All subcontractors must submit an Indiana Merchants Certificate Number (for Work performed in the State of Indiana) and their Federal Identification Number (for all Work) before any payments will be released.
3. INSURANCE. Subcontractor shall, at its expense, procure and maintain insurance at all times through the date of the Owner’s final acceptance of ESG’s Project, pursuant to this Agreement, on all of its operations, with carriers acceptable to ESG, and provide a certificate of insurance listing Energy Systems Group, LLC as the certificate holder and will include the following coverages:

1. Worker's compensation insurance in full compliance with the Worker's Compensation and Occupational Disease Laws of the states in which any part of the Work is to be performed, and Employers' liability coverage in the amount of $1,000,000 for each occurrence;
2. Commercial general liability insurance covering all operations in the minimum amount of $1,000,000 for each occurrence, $2,000,000 aggregate; and
3. Excess liability insurance in the minimum amount of $1,000,000 for each occurrence; and
4. Automobile liability insurance in the minimum amount of $1,000,000 combined single limit; and
5. Professional liability insurance in the minimum amount of $1,000,000 for each claim, $2,000,000 aggregate; and
6. Pollution liability insurance in the minimum amount of $1,000,000 for each claim.

The commercial general liability policy shall include, without limitation, blanket contractual liability coverage or a contractual liability endorsement covering the liability assumed by the Subcontractor under this Agreement with limits not less than those specified above. The certificates of insurance to be furnished hereunder shall reflect such coverage and shall include an endorsement naming ESG and Owner as additional insured under the commercial general liability and automobile liability policies. Further, Subcontractor’s insurance policy shall state that it will not be canceled or altered except after thirty days’ written notice to ESG. If blanket additional insured endorsements are provided, Subcontractor shall provide written notice to ESG within thirty days of material change or cancellation of policy. Subcontractor’s insurance policy shall also state that Subcontractor and its property damage insurers shall waive all rights of subrogation against ESG, Owner, and all directors, officers, agents and employees of ESG and Owner.

In the event Subcontractor or anyone for whom Subcontractor is responsible fails to maintain all insurance as provided in this Section 16, ESG may, in addition to, and without prejudice to any other remedies available to it under this Agreement or applicable law, on 5 days’ notice, purchase equivalent insurance. Subcontractor will reimburse ESG upon demand, or, at ESG’s option, by way of withholding from amounts otherwise due to Subcontractor, for all expenses ESG incurs in connection with obtaining such insurance.

1. CONFIDENTIALITY. All non-public, confidential, or proprietary information of ESG, Owner, and Subcontractor ("**Confidential Information**"), including, but not limited to, specifications, samples, patterns, drawings, documents, data, business operations, designs, customer lists, pricing, discounts, whether disclosed by the disclosing Party orally, written, or electronic form in providing the Work, and whether or not marked, designated, or otherwise identified as "confidential," is confidential and may not be disclosed or copied unless authorized by the disclosing Party in writing. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of the receiving Party's breach of this Agreement; (b) is obtained by the receiving Party on a non-confidential basis from a third-party that was not legally or contractually restricted from disclosing such information; or (c) the receiving Party establishes by documentary evidence, such information was in the receiving Party's possession prior to disclosing Party's disclosure; or (d) was or is independently developed by the receiving Party without using any Confidential Information. The Disclosing Party shall be entitled to injunctive relief for any violation of this Section.
2. CLAIMS RESOLUTION. Any dispute, controversy or claim (collectively referred to as “**Dispute**”) arising out of or relating to this Subcontract or any alleged breach hereof, upon the request of either Party, first shall be submitted to mediation prior to proceeding with any further legal or equitable proceedings. Mediation shall commence no later than 30 days after submission of the Dispute; provided, however, that in no circumstance shall ESG’s obligation to participate in mediation restrict, prevent or otherwise inhibit its right to prosecute Subcontractor’s Work with a replacement subcontractor(s). Unless otherwise agreed between the Parties, mediation shall be conducted at the job site and in accordance with the then prevailing rules of the Construction Industry Mediation Rules of the American Arbitration Association. All Disputes not settled by negotiation or mediation shall be reserved until the final completion or termination of the Work.
3. WARRANTY. Subcontractor warrants to Owner and ESG that all materials, workmanship and equipment furnished shall conform to the contract specifications, be new, free from faults and defects, of good quality, and be free from any security interest, lien, claims or other encumbrance.  Subcontractor hereby warrants its Work to be done in a workmanlike manner and against all such deficiencies and defects for       year(s) from Owner's final acceptance of ESG’s project.  Subcontractor will replace any equipment that fails because of defective workmanship, materials, or installation during the warranty period. Subcontractor shall also pass through to ESG all manufacturer warranties. If Subcontractor fails to timely correct the defective Work, ESG may either correct or accept such defective Work. Subcontractor shall be responsible for all of ESG’s costs and expenses for corrective actions (including engineering and other consultant’s fees and expenses) plus a fee equal to 15% of the repair costs. If ESG accepts defective Work, a Change Order will be issued to reflect a reduction in the Agreement amount.
4. MISCELLANEOUS
5. Compliance with Laws and ESG Safety Procedures.  Subcontractor shall keep itself fully informed of, and shall comply with, all applicable local, state and federal laws, statutes, ordinances, codes, executive orders, rules and regulations, orders or decrees, including but not limited to prevailing wage requirements and any applicable occupational safety and health requirements or regulations, which in any manner affect those engaged or employed in the Work, the materials and equipment used in the Work, or the performance of the Work.  Subcontractor will give adequate notices to authorities pertaining to the Work and shall secure and pay for all permits, licenses, fees, assessments, inspections and taxes necessary to complete the work in accordance with this Agreement. Subcontractor agrees to comply with ESG’s site-specific safety plan, if any, prepared for this Project, which shall be provided by ESG to Subcontractor promptly upon request.  Subcontractor agrees to supply all required safety equipment for their employees.  Subcontractor agrees to immediately report all jobsite injuries, accidents, near misses, and incidents to the ESG Project Manager.  ESG maintains a zero tolerance policy in regards to workers on the jobsite using or being under the influence of alcohol or illegal drugs.  Subcontractor shall indemnify, defend and hold ESG and Owner harmless from any fines, penalties and other costs assessed against ESG and/or Owner arising out of Subcontractor's failure to comply with this Section 20.a.  Subcontractor further represents and warrants that it is fully licensed to perform the Work covered by this Agreement, and shall keep such licenses current and valid during the performance of the Work.  Subcontractor shall be responsible and liable for any damage to ESG resulting from failure to obtain any license or permit.
6. Hazardous Materials. Except where Subcontractor’s Work hereunder requires the handling or abatement of asbestos or other hazardous material, if Subcontractor encounters asbestos or other hazardous material in the performance of its Work, Subcontractor shall immediately stop Work in the area and notify ESG. In such event, Subcontractor shall not disrupt, remove, or in any way alter or dislodge any asbestos or hazardous material, and Subcontractor shall take no further action in the area where the asbestos or hazardous material was found without specific written direction from ESG. Subcontractor is prohibited from using asbestos-containing materials or equipment in the performance of its Work unless it receives express, written consent to do so from ESG. If Subcontractor’s Work hereunder requires the handling or abatement of asbestos or other hazardous material, the Work shall be conducted by competent, certified and qualified individuals, trained and knowledgeable in the areas of asbestos abatement, handling, the disposal of asbestos-containing and asbestos-contaminated materials, and the cleaning of asbestos-contaminated areas. In all circumstances, local, state, and federal laws and regulations pertaining to asbestos reporting, abatement, handling, and disposal shall be followed.
7. Environmental. Should any discharge, leakage, spillage, emission, or pollution of any type (collectively, “**Pollution**”) occur upon or from the Facilities due to the fault of Subcontractor or its subcontractors, Subcontractor shall clean or otherwise remediate such site and any other lands upon which Pollution occurs, to the satisfaction of Owner and any governmental authority having jurisdiction. Such remediation shall be performed by Subcontractor or someone hired by Subcontractor, at its sole cost, risk and expense, and Subcontractor shall indemnify, defend and hold harmless ESG and Owner from and against any loss, cost, liability, expense, judgment, fine, and/or penalty imposed upon or assessed against ESG and/or Owner as a result of any Pollution or the remediation thereof; provided, however, that the foregoing shall not prevent Subcontractor from seeking contribution or indemnity from any other party bearing full or partial responsibility for said Pollution; and provided further, Subcontractor’s recourse against ESG and/or Owner shall be limited to ESG’s and/or Owner’s own direct contribution to the occurrence of the Pollution. In the event Subcontractor is unable or unwilling to complete any needed remediation, ESG and/or Owner may perform any remediation of such Pollution; provided, however, Subcontractor shall reimburse ESG and/or Owner for all costs and expenses incidental to such remediation.
8. Nondiscrimination in Hiring Employees. The Subcontractor and it subcontractors and suppliers shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of his or her race, color, religion, age, sex, disability, national origin, height, weight, familial status, or marital status, or for any other reason that is prohibited by applicable federal, state or local law. Breach of this provision may be regarded as a material breach of this Contract.
9. Damages. If ESG is obligated to pay damages pursuant to its contract with Owner, Subcontractor shall be liable for such damages to the extent Subcontractor causes or contributes to any delay or other damages for which ESG may be liable.
10. Waiver. The failure of ESG to insist upon strict performance of any of the terms and conditions of this Agreement, or to exercise or delay the exercise of any rights or remedies provided by this Agreement or by law, or the acceptance of Work or payment for Work shall not release Subcontractor from any of the responsibilities or obligations imposed by law or by this Agreement, and shall not be deemed a waiver of any right of ESG to insist upon strict performance of this Agreement.
11. Notice. Whenever notice is required to be conveyed to either Party, such notice shall be mailed by Certified Mail, postage prepaid to the following addresses:

|  |  |
| --- | --- |
| If to ESG:Energy Systems Group, LLC9877 Eastgate CourtNewburgh, IN 47630 | If to Subcontractor:                |

1. Bonds. A payment bond is [ ]  required, is not [x]  required. (check one)

 A performance bond is [ ]  required, is not [x]  required. (check one)

 All bonds shall be equal to 100% of the Agreement price, unless ESG agrees in writing to a lesser percentage.

All bonds shall be on AIA A-312 (2010) edition forms and issued by a surety company licensed in the state where the project is located. The surety company shall have a minimum AM Best rating of A- VIII and shall otherwise be acceptable to ESG. The cost of all bonds are included in the fixed price. The bonds shall cover all Work, including any changes, and shall remain in effect until final acceptance of the Work, final payment, and receipt by ESG of all lien releases.

1. Liens. If, at any time, there shall be evidence of any lien or claim for labor, materials or otherwise furnished by a subcontractor or supplier of Subcontractor in relation to the Work for which, if established, ESG and/or Owner may become liable or which may attach to the project and/or Owner’s property, the Subcontractor shall pay or obtain the release of the lien or claim without expense to ESG or Owner, or at ESG’s option, ESG may pay the same and charge Subcontractor for such costs. Subcontractor agrees to indemnify, defend and hold harmless ESG, Owner and ESG’s bonding company if any liens or claims are filed against the Work or with Owner or against any of ESG’s bonds by any of Subcontractor’s subcontractors, sub-subcontractors or their suppliers. This indemnity obligation shall include attorney’s fees and expenses incurred by ESG, Owner and ESG’s bonding company.
2. Financial Books and Records. Subcontractor shall maintain financial books, documents, and cost accounting records regarding this Agreement on an accrual basis in accordance with generally accepted accounting principles. Subcontractor shall make these records available to ESG, upon reasonable request, if required by law, or if requested by the Owner, for audit, inspection, or copying.
3. Allocation of IRC Section 179D Deduction. As a result of ESG’s design and implementation of certain energy-efficiency related aspects of this project, certain income tax deductions may become available under Section 179D of the Internal Revenue Code, which the Owner may allocate to ESG under its contract with ESG, or otherwise. The Parties agree that as between Subcontractor and ESG, ESG is the entity primarily responsible for designing energy efficiency improvements for the Owner on this project and that Subcontractor is supporting ESG’s work in that respect. Subcontractor acknowledges that as between it and ESG, ESG is exclusively entitled to any allocation of the 179D benefits from Owner. Subcontractor waives, for the benefit of both ESG and the Owner, any claim of entitlement to allocation of any part of the 179D deduction and releases Owner and ESG from any claim or liability related to allocation of the 179D deduction to ESG. Subcontractor agrees that it has, and will have, no right or entitlement to any part of the 179D deduction on this project. Subcontractor shall assist in ESG’s tax compliance. Upon job completion, Subcontractor shall have its authorized representative execute the required Inspection, Certification and Calculation documents related to Section 179D of the Internal Revenue Code. ESG shall be responsible for preparing these Documents, all accompanying documentation and the contents therein.
4. Ethics and Compliance Code. Subcontractor shall comply with ESG’s Ethics and Compliance Code of Conduct for Consultants, Contractors, Suppliers and Vendors found at this link: <https://energysystemsgroup.com/terms/>
5. Assignment of Environmental Attributes. As a result of the implementation of this project, certain Environmental Attributes may be available, either now or in the future. It is hereby understood by Subcontractor that ESG or Owner shall own all Environmental Attributes.

“Environmental Attributes” means any and all credits, deductions, benefits, emission reductions, incentives, offsets, and allowances, howsoever entitled, attributable to and arising from the implementation of this project, whether such Environmental Attributes now exist or are developed in the future. Environmental Attributes include but are not limited to: (1) Any avoided emissions of pollutants to the air, soil, or water; (2) Any avoided emissions of carbon dioxide (CO2), methane (CH4) and other greenhouse gases (GHGs); (3) Section 45 credits; (4) green tags; (5) renewable energy credits; and (6) The reporting rights to these avoided emissions such as White Tag Reporting Rights. Environmental Attributes also include any energy, capacity, reliability, or other energy reduction attributes that result from the implementation of this project. Subcontractor shall have no rights to claim any of these Environmental Attributes.

1. Independent Contractor. The Parties agree that subcontractor will perform its obligations under this Agreement as an independent contractor. Subcontractor is not an employee, agent, or partner of ESG. Subcontractor has no rights whatsoever to the intellectual property of ESG and no license to use, in any manner, the logo, name, copyright, trade secret, trademark or other intellectual property right of ESG without prior written consent. Subcontractor retains the right and responsibility for the employment, direction, compensation and discharge of Subcontractor’s personnel, as well as compliance with worker’s compensation, unemployment, disability insurance, social security, withholding and all other applicable laws, rules, codes, taxes, regulations and ordinances.
2. Successors and Assigns. Neither Party may assign this Agreement without the written consent of the other Party, which consent may not be withheld unreasonably. Provided however, ESG may assign this Agreement without the consent of Subcontractor (i) to an Affiliate of ESG; (ii) pursuant to a merger, consolidation, transfer of substantially all its assets; or (iii) by operation of law. ESG may assign its rights, but not its obligations, under this Agreement without the consent of Subcontractor to (x) a lender providing financing to ESG, or (y) a special purpose entity that is an Affiliate of such lender. This Agreement will be fully binding on the Parties and their respective successors and permitted assigns. Any assignment made in contravention of this section is void and unenforceable.
3. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Indiana. Any action at law or judicial proceeding instituted by Subcontractor against ESG shall be brought in the state of Indiana, except that if the Owner sues ESG related to Subcontractor’s performance then Subcontractor consents to litigate any related claims in the jurisdiction selected by the Owner. Each Party waives objection to jurisdiction by such courts.
4. Interpretation. In no instance should this Agreement be interpreted more strictly against either Party due to the rule or conclusion that a document should be construed more strictly against its drafter. Both Parties agree and acknowledge that they had the opportunity to be represented by legal counsel of their choosing.
5. Entire Agreement. This Agreement, including all Attachments, represents the entire and integrated agreement between the Parties and supersedes prior negotiations, representations and/or agreements, either written or oral. The Parties may only modify or amend this Agreement in a signed writing.

Dated: Dated:

**ENERGY SYSTEMS GROUP, LLC**

By: By:

 (Signature) (Authorized Representative of Company)

Title: Title:

 (Printed or Typed Name) (Printed or Typed Name)

9877 Eastgate Court

Newburgh, IN 47630

**SUBCONTRACT AGREEMENT Subcontract No.:**

**ATTACHMENT A ESG Project No.:**

**COMPLETION DATES AND SCOPE OF WORK Project Name:**

PROJECT SUBSTANTIAL COMPLETION DATE:

PROJECT FINAL COMPLETION DATE:

SCOPE OF WORK:

**SUBCONTRACT AGREEMENT Subcontract No.:**

**ATTACHMENT B ESG Project No.:**

**SUBCONTRACT PRICE BREAKDOWN Project Name:**

**SUBCONTRACT AGREEMENT Subcontract No.:**

**ATTACHMENT C ESG Project No.:**

**OWNER CONTRACT FLOWDOWNS Project Name:**

This **Attachment C** contains excerpts from ESG’s agreement with the Owner relating to this Project, which shall apply to the “Subcontractor” identified within the above-referenced Subcontract Agreement to the same extent they apply to ESG. If there is a conflict between the terms of the Agreement to which this **Attachment C** is attached and the obligations described in this **Attachment C**, the inconsistency shall be resolved by an interpretation requiring the most stringent degree of obligation and responsibility to the Owner or to ESG, as the case may be, on the part of the Subcontractor.

For purposes of clarity, reference to the term, “Contractor,” below, shall mean and include the “Subcontractor,” as defined within the above-referenced Subcontract Agreement. Similarly, the term “subcontractor,” below, shall mean and include any and all of the applicable lower tier sub-subcontractors, sub-consultants, vendors, and other entities or persons for whom the Subcontractor is responsible and are obligated to provide Work or services described within Attachment A to this Subcontract Agreement.

**SUBCONTRACT AGREEMENT Subcontract No.:**

**ATTACHMENT D ESG Project No.:**

**PREVAILING WAGE DETERMINATION Project Name:**

<REFERENCE ATTACHMENT D IN ATTACHMENT C FLOWDOWNS, IF PREVAILING WAGE IS REQUIRED.>

**FOR COUNTY, STATE**

**DECISION #: \_\_\_\_\_\_\_\_\_\_\_\_ DATED \_\_\_/\_\_\_/\_\_\_**

The aforementioned Work Order is subject to the Service Contract Act (SCA) and/or Davis-Bacon Act (DBA). Subcontractor shall pay no less than the wage rates required by the SCA or DBA, as applicable

*For SOW’s that cross over -multiple counties, additional language may be require**d.*

*<The scope of work for this Work Order may cover multiple counties. Each county may have unique wage determinations, all have been provided within this Attachment. Subcontractor is required to submit separate certified payroll reports for each county for the entirety of this agreement.>*