



SWINERTON

MASTER SUBCONTRACT AGREEMENT

THIS MASTER SUBCONTRACT AGREEMENT (“MSA” or “Agreement”) is made this [date] day of [month], [year], between Swinerton Builders, with an office located at 2001 Clayton Road, 7th Floor, Concord, CA 94520 (“Contractor”), and , with an office located at Address, City , State, Zip Code(“Subcontractor”).

This MSA is entered into by and between the Parties with the intent and understanding that it will serve as a master agreement applying to and governing all projects for which Contractor engages Subcontractor (regardless of each Party’s division or office issuing the Agreement). This MSA sets forth the terms and conditions under which Subcontractor will provide construction services to Contractor when requested by Contractor. For each specific Project on which Contractor engages Subcontractor, a Work Order (“WO”) shall be executed, which shall incorporate this MSA by reference, and shall contain additional terms and conditions governing Subcontractor. The Parties agree that if any modifications are made to this MSA (as would be called out by tracked changes/redlines), such modifications do not apply to any competitive bid public contracts, whether federal, state or local.

This MSA shall consist of the following documents, all of which are either attached hereto as Attachments or are hereby incorporated by this reference, and made a part of the Subcontract Documents (defined below) as follows:

Standard Insurance / Bonding Requirements	date	Standard Collective Bargaining Agreement	date
Minimum Safety, Health, Environmental Requirements	date	State Specific Provisions	date
Standard Project Procedures & Quality	date		
Standard MBE/WBE/DVBE Program	date		

This MSA shall be in effect for five (5) years but shall also continue in effect for the duration of any Project commenced hereunder within such period of time, unless terminated earlier by Contractor in its sole discretion.

The Parties agree to the Standard Terms and Conditions set forth below.

- SUBCONTRACT DOCUMENTS.** The term “Subcontract Documents” shall include, without limitation, (i) the MSA and all attachments identified in the MSA, (ii) the WO and all attachments identified in the WO, (iii) the Prime Contract Documents applicable to a specific Project, and (iv) all modifications and change orders issued after execution of the Agreement. The “Prime Contract Documents” as used in this paragraph are defined to mean and include the Prime Contract between the Owner and Contractor (or general contractor if other than Contractor) for a specific Project; (b) if Contractor is performing as a subcontractor to a general contractor, the contract between the Contractor and such general contractor (“GC Contract”); and (c) if Contractor is performing as a sub-tier subcontractor, any subcontract or other agreement under which Contractor is performing (“Upstream Subcontract”), and including, but not limited to, all drawings and specifications, general and special or supplementary conditions and all other documents or attachments incorporated in the into any such agreement described in (a)-(c). Upon Subcontractor’s request, Contractor shall make copies of the Prime Contract Documents available for review and reproduction, however, Contractor reserves the right to redact confidential, financial and trade secret information from the Prime Contract Documents made available to Subcontractor. The terms and conditions of any of Subcontractor proposals or quote submitted for a specific Project shall not in any way modify, amend, add or subtract from the terms and conditions contained in this MSA.

- (a) **Assumption of Prime Contract Documents into WO.** By signing a WO, Subcontractor certifies that it is fully familiar with all the terms and conditions of all Subcontract Documents applicable to the WO and certifies that it is familiar with the location of the job site, and the conditions under which the Work is to be performed and that it enters into the Agreement based upon its own investigation of all such matters and is not relying on opinions or representations of Contractor. Subcontractor assumes toward the Contractor and the Owner all the obligations that the Contractor assumes toward the Owner in the Prime Contract Documents with respect to the Subcontract Work. Contractor shall have the same rights and remedies against the Subcontractor as the Owner has against Contractor under the Prime Contract.
- (b) **Interpretation.** Capitalized terms defined in this MSA shall apply to all Subcontract Documents, and terms not defined herein shall have the same meaning defined in other Subcontract Documents. The Subcontract Documents are complementary, and what is required by any one shall be as binding as if required by all. Subcontractor shall promptly report to Contractor in writing any discrepancies or errors which come to its attention in the Subcontract Documents.
- (c) **Order of Precedence.** In the event of conflicts in the Subcontract Documents, the order of precedence, highest to lowest, shall be as follows (1) WO and its attachments; (2) MSA and its attachments; and (3) Prime Contract Documents. In the event of inconsistency or conflict amongst the provisions of this Agreement, the provision imposing the most stringent obligation on Subcontractor will control.
2. **PERFORMANCE OF THE WORK.** The "Subcontract Work" or "Work" includes all labor, services, materials, freight, packaging, supplies, hardware, fasteners, fixtures, tools, layout, engineering, value engineering, detailing, equipment, scaffolds, hoisting, administration, supervision, transportation, warehousing, storage and other facilities, permits, and all other items and services necessary for the proper and complete performance and acceptance of the Work and obligations set forth in the Subcontract Documents for a Project. Subcontractor agrees (1) that all Work shall conform strictly to the Subcontract Documents, (2) to perform the Work within the time specified in the Subcontract Documents, with all necessary certificates, licenses and permits in place for the Work, according to the Subcontract Documents and to the satisfaction of Owner, Architect and Contractor, and (3) to provide a full-time competent superintendent acceptable to Contractor who shall have authority to act on behalf of Subcontractor shall attend all meetings as requested by Contractor and shall supervise the Work. Subcontractor shall carefully study and compare the Subcontract Documents and timely notify Contractor in writing of any error, inconsistency, omission Subcontractor recognizes or should have recognized prior to executing any of the affected Work so as to allow Contractor sufficient time to provide timely notice of such issues to Owner under the Prime Contract Documents. Subcontractor shall submit a schedule of values for approval at the commencement of the Work. The installation of the Subcontractor's Work will be considered evidence of its acceptance of the existing conditions as being correct and to its approval. Responsibility for proper configurations and dimensions of any part of the Work shall rest with Subcontractor.
3. **SCHEDULE.** Time is of the essence of this Agreement and all WOs. Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of its Work in a form and by a date acceptable to Contractor. Subcontractor shall conform to Contractor's reasonable progress schedule and all reasonable revisions or changes made thereto, which Subcontractor recognizes shall be made for the benefit of the timely progress of the Project. Subcontractor shall prosecute its Work without delaying or hindering Contractor's work or the work of others. Subcontractor shall coordinate its Work with that of all other contractors, subcontractors, and of Contractor.
- (a) Subcontractor agrees to notify Contractor in writing within two (2) working days of any delays or anticipated delays (or 24-hours prior to the time within which Contractor must provide notice to the Owner pursuant to the terms of the Prime Contract Documents, whichever is earlier) to the Work and to state the cause of said

delays. If Subcontractor fails to provide such written notice, Subcontractor waives any and all rights to additional time or costs associated with all delays or anticipated delays for which timely notice was not given.

- (b) In the event Subcontractor fails to maintain its part of Contractor's schedule, it shall, without additional compensation, accelerate the Work as Contractor may direct until the Work is in accordance with such schedule. Contractor shall have complete control of the premises on which the Work is to be performed and shall have the right to decide the time and order in which various portions of the Project shall be performed.
 - (c) No claims for additional compensation or damages for delays, including, but not limited to, force majeure delays, delays caused by third-party utilities, governmental bodies and regulatory authorities, delays caused by the Owner, its agents, employees, or its separate contractors, or any other delay beyond the Control of Contractor shall be recoverable from Contractor. An extension of time for completion shall be the sole remedy of Subcontractor and Subcontractor waives and releases any and all claims for additional compensation; provided, however, that if Contractor obtains additional compensation from Owner, on account of such delays to the Work, Subcontractor shall be entitled to such portion of the compensation received by Contractor as is equitable under all of the circumstances. If Contractor prosecutes a claim against Owner for additional compensation for any delay, Subcontractor shall cooperate with Contractor in the prosecution thereof and shall pay its proportionate share of costs and expenses incurred on behalf of Subcontractor in connection therewith.
 - (d) If Subcontractor should default or otherwise cause delay to Contractor's work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including actual, consequential and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default or delay.
 - (e) Subcontractor agrees to submit (1) on a weekly basis, and at the time of submission of progress payment requests, a report, in a form satisfactory to Contractor, itemizing on a weekly basis actual quantities of work performed and (2) on a daily basis a "Subcontractor Daily Report" for each day on the jobsite that indicates the daily manpower and equipment employed by Subcontractor on the Project, as well as a description of the activities performed that day.
4. **WARRANTY.** Subcontractor warrants to Owner, Architect and Contractor that all materials and equipment furnished shall be new, unless otherwise specified, and that all Work shall be free from faults and defects and in conformance with the Subcontract Documents and all laws, codes, ordinances, rules, regulations and orders applicable to the Work. All Work not conforming to these requirements, including substitutions not properly approved and authorized in writing, shall be considered defective.
5. **CHANGES IN THE WORK.** Contractor may at any time, by written change order signed by Contractor's Project Manager only, and without notice to any surety who issued a Subcontractor bond, make changes in the Work within the general scope hereof. If such changes cause an increase or decrease in the cost of the Work or in the required time for its performance, an equitable adjustment shall be made subject to the conditions of this Paragraph. If Contractor and Subcontractor cannot agree on the cost or time of performance for the change order work, or if Contractor or Owner disagrees that any work is change work, Subcontractor shall nevertheless timely perform the disputed work as directed by Contractor.
- (a) No increase in compensation or extension of time for performance shall be allowed unless Subcontractor makes application therefor, in writing, to Contractor within seven (7) days from the date on which Subcontractor receives a notification of change, (or three days prior to the time within which Contractor must submit a change order request or quotation to Owner pursuant to the Prime Contract Documents, whichever is earlier). Subcontractor's application must include a detailed breakdown of all costs and any schedule delays associated with the change. Contractor shall have the right to, but is not obligated to, audit any information related to

such application, including, without limitation bid information, actual costs associated with such work, and all records and books related to the Project. If Subcontractor does not submit an application in this time period, due to the substantial prejudice sustained by Contractor as a consequence of Subcontractor's failure to submit a timely written application, Subcontractor shall be deemed to waive and release any claim for additional compensation or additional time for such change. The Contractor will quote the Owner accordingly and Subcontractor will be responsible to perform the changes defined in the change order with no adjustment to Subcontractor's compensation or time required for the performance of the Work.

- (b) To the maximum extent allowed by law, Contractor's obligation to Subcontractor for any modification, change, delay, disruption, loss of productivity, interference, acceleration or other damages resulting from or arising out of any cause beyond Contractor's reasonable control, including but not limited to acts or omissions by Owner, Architect, third party utilities, governmental and regulatory authorities or force majeure, is limited to paying to Subcontractor its proportionate share of any amounts which Owner pays to Contractor as a result of such claim, subject to any offset for Contractor's costs and expenses incurred in presenting such claim to Owner and Subcontractor waives and releases any claims beyond such share received by Contractor. Any disputed Work must be tracked and submitted to Contractor on a daily basis. Failure to provide time and material tickets on a daily basis shall be deemed an agreement by Subcontractor that Work performed that day is not recoverable from Contractor and Subcontractor waives any and all rights to additional compensation therefrom. Any signature by Contractor employee on a time and material daily ticket shall mean Contractor is acknowledging receipt of the time and material ticket only, and such signature is not an admission that Contractor is accepting any such time or cost as extra work or that the cost associated with such time or material is due Subcontractor.

6. PAYMENT.

- (a) Contractor agrees, in consideration of the full and complete performance of the Work by the Subcontractor in accordance with the terms and provisions of the Subcontract Documents, to pay or cause to be paid to the Subcontractor the Subcontract Sum. Subcontractor understands that all payments to Subcontractor will be made only from a special fund and a specific source, namely, from payments made by Owner from time to time to Contractor in respect of Work performed by Subcontractor. Contractor shall make payments to Subcontractor within seven (7) days after receipt by Contractor of payment from Owner for the Work of Subcontractor for which payment has been made (or within such shorter period as may be required by the state law applicable to the Project).
- (b) If Contractor is not paid by Owner any sum claimed due by Subcontractor, then Contractor's obligation to make payment to Subcontractor with respect to the time for payment to Subcontractor shall, in addition to any other conditions set forth in the Subcontract Documents, be subject to the following conditions precedent:
- (i) If such nonpayment by Owner is finally adjudged to have been caused by a breach by Contractor of the Prime Contract Documents, and such breach is not caused by Subcontractor's failures in performance, then Contractor shall pay to Subcontractor such sum as is due under the Subcontract Documents, inclusive of simple interest thereon at the rate of 5% per annum accruing from the date such sum was first due and owing to Subcontractor as set forth above.
- (ii) If Contractor does not pay Subcontractor sums claimed due under the Subcontract as a result of nonpayment by the Owner and such nonpayment is caused by the Owner's insolvency, bankruptcy, or lack of sufficient assets, or for reasons other than a breach by Contractor of the Prime Contract Documents, then Subcontractor's right to payment shall be conditioned upon the passage of such time as may be reasonable and necessary for Contractor to fully exercise and exhaust to final judgment its legal, extra-judicial and appellate rights and remedies for collection of sums unpaid by Owner, together with the passage of such additional time as reasonably necessary for execution by Contractor of any

final judgment entered in its favor. Simple interest only on such sums as are due to Subcontractor under this Paragraph (ii) shall accrue and be payable to Subcontractor at the rate of 5% per annum commencing from the expiration of the reasonable time reserved to Contractor in this Paragraph (ii) for recovery and collection from Owner.

- (iii) Subcontractor agrees to preserve and maintain its mechanic's lien and stop notice rights (of any sort as allowed by law) with respect to a Project and to exercise and exhaust those rights in the event of Owner non-payment under the Prime Contract Documents.
- (c) All billings for work performed shall be made on Contractor's standard forms. Payment requests must be delivered to Contractor sufficiently early as to not delay timely submission of Contractor's progress payment requests to Owner.
- (d) Contractor shall retain from progress or other payments hereunder ten percent (10%) of the amount due until after final acceptance of the work by the Architect and Owner and until ten (10) days after Contractor's receipt of final retention payment from Owner, unless otherwise required by the state law applicable to the Project.
- (e) Subcontractor shall furnish Unconditional and Conditional Waiver and Release forms, mechanics' lien, stop notice, construction lien, materialman and bond claim releases (including from lower tier subcontractors and suppliers), payment affidavits, certified payroll and any other forms as required on a Project with each application for progress payments and on final payment. Receipt by Contractor of all required documents and approval by Contractor of those documents are conditions precedent to payment by Contractor.
- (f) Unless otherwise provided in the Subcontract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if allowed in the Subcontract Documents and approved in advance by the Contractor, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by Subcontractor of bills of sale or such other procedures satisfactory to Contractor to establish Owner's title to such materials or equipment or otherwise protect Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.
- (g) Contractor may withhold or, on account of subsequently discovered evidence, may nullify, the whole or part of any payment as reasonably necessary to protect Contractor and Owner from any actual or potential loss or damage on account of Subcontractor's performance and Subcontractor's Work on a Project or Subcontractor's breach or alleged breach of the Subcontract Documents, or as otherwise allowed by law. When the reason(s) for withholding payment is/are rectified, amounts then due and owing shall be paid or credited to Subcontractor.
- (h) Contractor reserves the right to make payment by joint check or by direct check to Subcontractor's materialmen or sub-subcontractors or to any other person or entity who has performed work or furnished materials under this Subcontract. Prior to making any payment by joint check or direct check, Contractor shall provide Subcontractor written notice of any such intent, and allow Subcontractor a reasonable opportunity to provide reasonable information why such funds are not due or owing to any sub-tier subcontractor or supplier.
- (i) Any payment made hereunder prior to completion and acceptance of the Work shall not be construed as evidence or acknowledgment of proper completion of any part of the Work.

SEE STATE SPECIFIC ADDENDUM FOR PAYMENT SECTIONS WHICH WILL TAKE PRECEDENCE AND CONTROL IN THE SPECIFIC STATES LISTED.

7. INDEMNIFICATION AND DUTY TO DEFEND. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SUBCONTRACTOR SPECIFICALLY OBLIGATES ITSELF TO PROTECT, IMMEDIATELY DEFEND, INDEMNIFY AND HOLD CONTRACTOR, OWNER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES AND ANY OTHER PERSON INDEMNIFIED BY OWNER (HEREINAFTER "INDEMNITEES") HARMLESS AGAINST CLAIMS, DAMAGES, LIABILITY, LOSSES, DEMANDS, CAUSES OF ACTION, JUDGMENTS, COSTS, EXPENSES, INCLUDING ANY FEES OF ACCOUNTANTS, ATTORNEYS, EXPERTS OR OTHER PROFESSIONALS, OR INVESTIGATION EXPENSES (HEREINAFTER "LOSSES") ARISING OUT OF THE SUBCONTRACTOR'S OPERATIONS AND THE WORK. SUBCONTRACTOR'S OBLIGATIONS INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING: (I) LOSSES FOR ANY ALLEGED OR ACTUAL VIOLATION OR INFRINGEMENT BY SUBCONTRACTOR (OR SUBCONTRACTOR'S EMPLOYEES OR SUBCONTRACTORS OR CONSULTANTS OR VENDORS OF ANY TIER) OF ANY LAW, STATUTE, CODES, SAFETY OR OCCUPATIONAL HEALTH ORDERS, RULES, REGULATIONS, STANDARDS, ORDERS OR ANY PATENT OR PATENT RIGHT; (II) LOSSES RESULTING FROM INJURY TO OR DEATH OF ANY PERSON (INCLUDING SUBCONTRACTOR'S EMPLOYEES) OR DAMAGE TO PROPERTY OF ANY KIND (INCLUDING ECONOMIC LOSS), INCLUDING THE SUBCONTRACTOR'S WORK OR THE WORK OF OTHERS ON THE PROJECT, WHICH INJURY, DEATH OR DAMAGE ARISES OUT OF THE PERFORMANCE OF SUBCONTRACTOR'S WORK; (III) LOSSES ARISING FROM: (1) CONSTRUCTION LIENS, MECHANICS' LIENS, OR OTHER MATERIALMAN'S LIEN OF ANY SORT, STOP NOTICE CLAIMS AND PAYMENT BOND CLAIMS MADE BY ANY SUB-SUBCONTRACTOR, SUPPLIERS, LABORERS, RENTAL COMPANIES, OR THE LIKE, AND (2) CLAIMS AND LIENS FOR LABOR TAXES, MATERIALS, APPLIANCES, EQUIPMENT, AND SUPPLIES WHATSOEVER, INCLUDING ANY COSTS, ATTORNEYS' FEES, AND INCIDENTAL DAMAGE RESULTING THEREFROM; AND FOR FAILURE BY SUBCONTRACTOR OR ANY PARTY ACTING ON SUBCONTRACTOR'S BEHALF TO COMPLY WITH ALL LAWS, ORDINANCES AND REGULATIONS OF ALL GOVERNMENTAL AUTHORITIES IN ANY MANNER RELATING TO THE SUBCONTRACT WORK; AND (IV) LOSSES ARISING OUT OF ANY BREACH OF OR FAILURE OR ALLEGED FAILURE TO COMPLY WITH THE TERMS OF THE SUBCONTRACT DOCUMENTS.

SUBCONTRACTOR'S INDEMNITY AND HOLD HARMLESS OBLIGATIONS HEREUNDER SHALL APPLY TO ANY ACTS, OMISSIONS, WILLFUL MISCONDUCT, NEGLIGENT CONDUCT, OTHER FAULT, OR LIABILITY WITHOUT FAULT OF ANY PERSON OR ENTITY FOR WHOM SUBCONTRACTOR IS OR MAY BE RESPONSIBLE; HOWEVER, SUBCONTRACTOR SHALL NOT BE REQUIRED TO INDEMNIFY AN INDEMNITEE AGAINST CLAIMS ARISING FROM HIS, HER, OR ITS OWN ACTIVE NEGLIGENCE OR WILLFUL MISCONDUCT.

SUBCONTRACTOR ACKNOWLEDGES THE SEPARATE AND INDEPENDENT DUTY TO DEFEND SET FORTH IN THIS PARAGRAPH, AND SHALL, REGARDLESS OF WHETHER ANY INDEMNIFICATION OBLIGATIONS LATER ARISE, AT ITS OWN COST, EXPENSE AND RISK, AND IMMEDIATELY UPON TENDER, DEFEND THE INDEMNITEES IN ANY AND ALL CLAIMS, DEMANDS, ACTIONS, LIEN ACTIONS, SUITS OR OTHER LEGAL, ARBITRAL, ADMINISTRATIVE OR OTHER PROCEEDINGS WHICH MAY BE BROUGHT AGAINST INDEMNITEES. SUBCONTRACTOR MAY APPOINT COUNSEL OF ITS CHOICE, HOWEVER, SUCH COUNSEL SHALL BE (I) EXPERIENCED AND CAPABLE OF EFFECTIVELY HANDLING THE SUBJECT MATTER ASSIGNED, AND (II) FREE OF CONFLICTS OF INTERESTS, BIASES AND PREJUDICES AGAINST THE INDEMNITEES. ALTERNATIVELY, SUBCONTRACTOR MAY ELECT TO PAY, WITHIN 30 DAYS OF RECEIPT OF AN INVOICE FROM CONTRACTOR ITS ALLOCABLE SHARE OF CONTRACTOR'S DEFENSE FEES AND COSTS DURING THE PENDENCY OF A CLAIM. IF SUBCONTRACTOR FAILS TO TIMELY AND ADEQUATELY PERFORM ITS OBLIGATIONS, CONTRACTOR SHALL HAVE THE RIGHT TO PURSUE A CLAIM AGAINST THE SUBCONTRACTOR FOR ANY RESULTING COMPENSATORY DAMAGES, INTEREST ON DEFENSE AND INDEMNITY COSTS FROM THE DATE INCURRED, CONSEQUENTIAL DAMAGES, AND REASONABLE ATTORNEYS' FEES INCURRED TO RECOVER THESE AMOUNTS.

THE FOREGOING INDEMNITY AND DEFENSE OBLIGATIONS ARE NOT LIMITED BY THE AMOUNT OF ANY AVAILABLE INSURANCE AND ARE IN ADDITION TO ANY EXPRESS OR IMPLIED INDEMNITY OR CONTRIBUTION RIGHTS AVAILABLE TO ANY OF THE INDEMNITEES AT LAW OR IN EQUITY.

ALL WORK DONE AT THE SITE OR IN PREPARING OR DELIVERING MATERIALS OR EQUIPMENT, OR ANY OR ALL OF THEM, TO THE SITE SHALL BE AT THE RISK OF SUBCONTRACTOR EXCLUSIVELY UNTIL THE COMPLETED WORK IS ACCEPTED BY CONTRACTOR.

WITH RESPECT TO CLAIMS AGAINST AN INDEMNITEE, ASSERTED BY AN EMPLOYEE OF SUBCONTRACTOR, BY AN EMPLOYEE OF ONE OF SUBCONTRACTOR'S SUBCONTRACTORS, BY AN EMPLOYEE OF ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR BY AN EMPLOYEE OF ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, SUBCONTRACTOR'S INDEMNITY OBLIGATIONS SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR SUBCONTRACTOR OR SUBCONTRACTOR'S SUBCONTRACTORS UNDER WORKER'S COMPENSATION ACTS, DISABILITY ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

ALL INDEMNITY OBLIGATIONS UNDER THIS SUBCONTRACT AGREEMENT SHALL APPLY TO CLAIMS ARISING BOTH BEFORE AND AFTER COMPLETION OF THE WORK UNDER THE SUBCONTRACT DOCUMENTS AND TO CLAIMS ARISING BOTH BEFORE AND AFTER THE TERMINATION OF ANY OF THE SUBCONTRACT DOCUMENTS. THE INDEMNITY OBLIGATIONS SET FORTH IN THIS OR IN ANY OTHER PROVISION OF THE SUBCONTRACT DOCUMENTS SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE ANY OTHER RIGHTS OF INDEMNITY ACCORDED BY LAW OR EQUITY TO THE INDEMNITEES.

SEE STATE SPECIFIC ADDENDUM FOR INDEMNITY SECTIONS WHICH WILL TAKE PRECEDENCE AND CONTROL IN THE SPECIFIC STATES LISTED.

8. INSURANCE

- (a) Subcontractor shall, at its own expense, procure not less than the insurance coverages and limits of insurance as specified within the Insurance Attachment, which is attached to the Subcontract Agreement and is an integral part of this Agreement. Such insurance shall be maintained with insurers, policy forms and deductibles satisfactory to Contractor and the Owner. Such insurance shall not contain any exclusion(s) that apply to the type of work performed by Subcontractor under this agreement, or to the cause of resultant damage arising out of work performed by Subcontractor. If Subcontractor uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth within the Insurance Attachment, Subcontractor agrees to amend, supplement or endorse the existing coverage to do so, at no additional cost to Contractor.
- (b) Subcontractor will also carry any other insurance specified in the Contract Documents for protection of Owner, Contractor and Subcontractor, and will keep all policies and endorsements in force as long as may be necessary to protect any of the above. Any acceptance of insurance certificates or endorsements by Contractor shall in no way limit or relieve the Subcontractor of its duties and the responsibilities assumed by him in this Agreement.
- (c) Subcontractor shall be responsible for payment of the deductible for any Builder's Risk/Course of Construction Insurance ("Builder's Risk") claim regardless of whether such coverage is procured by the Owner, Contractor or Subcontractor. Subcontractor shall be responsible for payment of the deductible in proportion to its percentage of responsibility of the entire loss (covered under the Builder's Risk Policy), as calculated prior to the application of the policy deductible.
- (d) Contractor may, at its own option, insure either the General Liability and Excess, or the General Liability, Excess and Workers' Compensation coverages by the Contractor's Project Wrap Up Insurance Program. If the Project is under a Contractor's Project Wrap Up Insurance Program, then Subcontractor shall be responsible for payment of the deductible for any Workers Compensation and/or General Liability claim arising from its work under the Contractors' Project Wrap Up Insurance Program in accordance with the Project Specific Insurance

Manual issued for the Project. Subcontractor shall be responsible for payment of the deductible in proportion to its percentage of responsibility of the entire loss (covered under the Contractors wrap-up insurance program), as calculated prior to the application of the deductible.

9. **BONDS.** If performance and/or payment bonds (“Bonds”) are required on a Project, Subcontractor agrees to furnish, concurrently with the execution of the WO, a performance bond in an amount equal to full Subcontract Sum and a payment bond in an amount equal to full Subcontract Sum with a corporate surety or sureties listed in the most current United States Department of the Treasury-Federal Register. Bonds shall be in a form satisfactory to Contractor and Owner. If Subcontractor fails to provide the required Bonds within three (3) days after demand by Contractor, Contractor shall have the immediate right to (1) terminate this MSA and any WO then in effect as a result of Subcontractor’s default and recover all costs and damages arising out of such default, including but not limited to the difference in cost of replacement contractor, and Subcontractor shall have no right to payment for any work performed prior to such termination, or (2) Contractor can secure such bonds for Subcontractor and back charge Subcontractor for the cost to do so. If change order work results in an increase in the Subcontract Sum, Subcontractor shall provide bond riders evidencing that the penal sum of the bonds has been increased to equal the adjusted Subcontract Sum. The cost of such increase in bond coverage shall be at Subcontractor’s expense and included in said change orders
10. **SAFETY.** Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including any and all accident prevention and safety programs of Owner and Contractor applicable to a Project.
11. **CLEAN-UP.** At all times during the course of performing the Work Subcontractor shall perform any necessary clean-up so as to maintain the Project site in a clean, safe and orderly condition. Subcontractor shall follow all directions of Contractor in regards to clean-up both during the course of the Work and at the completion of the Work. Contractor shall be entitled to back charge Subcontractor for the costs of clean up if Subcontractor fails to clean up its work after written demand by Contractor to do so.
12. **PROTECTION OF WORK.** Subcontractor shall secure and reasonably protect the Work and assume responsibility for the condition thereof until final acceptance by Architect, Owner and Contractor. Subcontractor shall provide such reasonable protection as is necessary to protect the work and the workers of Contractor, Owner and other subcontractors from its operations. Subcontractor shall be liable for any loss or damage to its Work in place or its materials on the Project. Subcontractor shall also be liable for loss or damage to work in place or damage to equipment and/or materials on the Project caused by Subcontractor or anyone for whom Subcontractor is responsible.
13. **USE OF CONTRACTOR’S EQUIPMENT.** If Subcontractor uses Contractor’s equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse Contractor at a predetermined rate. Further, Subcontractor assumes any liability connected therewith and responsibility for physical damage to such equipment, materials, labor, supplies, or facilities used by Subcontractor or its agents, employees, or permittees. Subcontractor accepts any and all of Contractor’s equipment, materials, labor, supplies or facilities as furnished. The use by Subcontractor of Contractor’s equipment or employees must be approved by Contractor
14. **CLAIMS FOR ADDITIONAL COMPENSATION AND DELAY.** In the event Subcontractor believes it is entitled to any additional compensation, time or other benefit, it shall submit a Claim in accordance with this Article. A Claim is a written demand or assertion by Subcontractor seeking an adjustment of the Subcontract’s terms, payment of money, delay, extension of time or other relief with respect to the Subcontract Documents. Timely notice is a condition precedent to Subcontractor bringing any Claim against Contractor. Subcontractor shall submit any Claim to Contractor within three (3) working days of the occurrence of the event giving rise to the Claim (or two

(2) working days prior to the time which Contractor must submit a pass-through request to the Owner pursuant to the Prime Contract Documents, whichever is earlier). Claims must be in writing, and contain sufficient narrative detail and supporting documentation justifying all claimed costs and delays. Claims shall be dated, signed and certified by a duly authorized representative of Subcontractor. Any Claim not timely submitted shall be deemed waived and forever released by Subcontractor. Contractor shall have the right to, but is not obligated to, audit any Claim.

Notwithstanding any other provision of the Subcontract Documents, to the maximum extent allowed by law, Contractor will be liable to Subcontractor on any Claim only if and to the extent Owner is liable to Contractor for the adjustment sought in such Claim. It is expressly understood that the only obligation Contractor has to Subcontractor under this provision is to pass on to Owner any Claim, and to pay to Subcontractor any amounts which Owner pays to Contractor as a result of such Claim. Subcontractor will reimburse Contractor for all costs and expenses, including attorneys' and consultants' fees and costs, incurred in connection with presenting any such Claim to Owner.

Unless otherwise agreed in writing, Subcontractor shall continue to prosecute the Work and maintain the Project Schedule pending resolution of any Claim. Any failure of Subcontractor to continue diligent and timely prosecution of the Work shall be deemed a material breach of the Subcontract Documents.

15. **DISPUTES AND DISPUTE RESOLUTION.** A Dispute shall arise when Contractor denies or otherwise challenges a timely Claim brought by Subcontractor or the Parties have another form of disagreement arising from the Subcontract Documents (collectively "Dispute").
- (a) **Work Continuation and Payment.** Subcontractor shall not delay or postpone any Work pending resolution of any Dispute and shall keep account of all cost information related to any Dispute. During a Dispute, Contractor shall continue to make payments for undisputed Work in accordance with the Subcontract Documents.
 - (b) **Disputes under the Prime Contract.** If a Dispute between Subcontractor and Contractor pertains in any way to a claim, dispute, or matter in question between Contractor and Owner arising out of or relating to the Prime Contract Documents, then the Dispute will be decided using the same law, procedures, forum, and process set forth in the Prime Contract Documents, regardless of whether Subcontractor formally joins the process as a litigant or named party. Subcontractor agrees to reasonably cooperate with Contractor in such process and to share proportionately the legal fees and costs associated with the preparation for and execution of the hearing to the extent mutually agreed upon related to the Claim being pursued by the Contractor on Subcontractor's behalf. Subcontractor further agrees to stay any action filed by the Subcontractor against Contractor until the dispute between Contractor and Owner is resolved. If a Project is located in Hawaii, and the Prime Contract does not provide rules for mediation, the mediation shall be governed by the Mediation Rules of Dispute Prevention & Resolution, Inc. (located in Honolulu, Hawaii) or the Parties may mutually agree to select another set of mediation rules.
 - (c) **Subcontractor Cooperation.** In the event it is not possible to join a Dispute to the dispute resolution procedures between Owner and Contractor as provided in Paragraph 15(b) above, Subcontractor agrees to enter into a mutually agreeable liquidating agreement with Contractor and to cooperate fully with Contractor in the prosecution or defense of Subcontractor's Claim by Contractor.
 - (d) **Disputes between Contractor and Subcontractor.** If a Dispute is only between Contractor and Subcontractor, then the dispute resolution procedure set forth in Paragraphs 15(e) through 15(f) below shall apply. Contractor reserves the right to consolidate any mediation, lawsuit or arbitration arising under this Agreement or a WO with any mediation, lawsuit or arbitration relating to disputes between Contractor and Owner. Subcontractor

shall include in each of its sub-tier agreements a specific provision whereby the necessary party agrees to be joined or consolidated with any dispute procedure between Contractor and Subcontractor.

- (e) **Mediation.** Neither Party shall proceed with arbitration or litigation until the Parties have mediated the Dispute. Mediation will be conducted under the American Arbitration Association's Construction Industry Mediation Rules unless the Parties agree otherwise. If a Project is located in Hawaii, the mediation shall be governed by the Mediation Rules of Dispute Prevention & Resolution, Inc. (located in Honolulu, Hawaii) or the Parties may mutually agree to select another set of mediation rules. If a Project is located in Hawaii, the mediation shall be governed by the Mediation Rules of Dispute Prevention & Resolution, Inc. (located in Honolulu, Hawaii) or the Parties may mutually agree to select another set of mediation rules. The costs of the mediator shall be shared equally by the Parties. The Parties agree to stay any legal or equitable proceedings pending completion of mediation. The mediation shall be held in the city or county where the Project is located, unless otherwise agreed. Prior to the mediation, Subcontractor shall provide sufficient supporting information as determined by Contractor to enable Contractor to reasonably evaluate Subcontractor's claims. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
- (f) **Binding Arbitration.** For Disputes not resolved by mediation as set forth above, the Parties agree to resolve such Disputes by binding arbitration as follows:
- (i) Arbitration shall be administered and conducted using the Construction Industry Arbitration Rules of the American Arbitration Association in effect at the time of initiation or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the Parties. If a Project is located in Hawaii, the arbitration shall be conducted using the Arbitration Rules of Dispute Prevention and Resolution, Inc. (located in Honolulu, Hawaii) in effect at the time of initiation or the Parties may mutually agree to select another set of arbitration rules.
 - (ii) It is the intent of the Parties that any Dispute arising under this Agreement or a WO may be consolidated with arbitration or mediation proceedings arising under the Prime Contract Documents or other agreements relating to the same transaction or series of transactions relating to the Work or the Project, provided that the agreement governing the other arbitration or mediation (1) permits consolidation; and (2) the disputes to be consolidated substantially involve common issues of law or fact creating the possibility of conflicting rulings.
 - (iii) It is the intent of the Parties that in any Dispute arising under this Agreement or a WO, either Party may include by joinder persons or entities who are parties to agreements relating to the same transaction or series of transactions relating the Work or the Project, provided the joinder is required if complete relief is to be accorded, to prevent the possibility of conflicting rulings on a common issue of law or fact, or otherwise to prevent risk of the Parties being subjected to inconsistent obligations or decisions.
 - (iv) Similarly, Subcontractor agrees to be joined in any arbitration or mediation between the Contractor and any person or entity with whom the Contractor has an agreement to arbitrate or mediate that relates to the same transaction or series of transactions relating to the Subcontractor's Work or the Project, including, but not limited to, the Prime Contract Documents, provided Subcontractor's presence is required if complete relief is to be accorded, to prevent the possibility of conflicting rulings on a common issue of law or fact, or otherwise to prevent risk of the Parties being subjected to inconsistent obligations or decisions.
 - (v) If a Party fails or refuses to appear or participate in the arbitration, or in any portion of the arbitration, after having been given notice and opportunity to participate by failing to participate in arbitrator selection, failing to pay arbitrator costs or fees, failing to respond to the arbitration demand, failing to

provide the arbitrator with papers or information demanded, or failing to appear at hearings, the arbitration will proceed and the arbitrator may render a final award on the basis of the evidence presented by the participating Party. An award rendered under such circumstances is valid and enforceable as if all Parties had participated fully.

16. **CONTRACTOR'S REMEDIES.**

- (a) If Subcontractor or any of Subcontractor's subcontractors, suppliers, materialmen or laborers at any time commit any of the acts or omissions below, it shall constitute an event of Default:
- (i) refuse or neglect to supply a sufficient number of properly qualified workers or a sufficient quantity of materials of proper quality;
 - (ii) abandon the Work or fail to promptly and diligently prosecute the Work;
 - (iii) fail to promptly pay subcontractors, suppliers, materialmen, rental companies or laborers;
 - (iv) fail to accelerate the Work as required by Article 3 hereof;
 - (v) give Contractor a reasonable basis to doubt the Work can be completed for the unpaid portion of the Subcontract Sum or within the required time;
 - (vi) declare bankruptcy or make a general assignment for the benefit of creditors or files for bankruptcy, assigns assets for the benefit of creditors, becomes insolvent or be unable to pay its obligations as they mature;
 - (vii) fail to comply with Contractor's prequalification program;
 - (viii) otherwise fail to perform any of the terms, conditions, agreements and obligations set forth in the Subcontract Documents; or
 - (ix) a default by Subcontractor in the performance of any contract or agreement with Contractor, whether related to this MSA or otherwise, shall constitute a Default under this Agreement.
- (b) In the event of a Default, Contractor may pursue any remedies available by common law or statute, including but not limited to one or more of the following:
- (i) withhold any sums due or thereafter to become due to Subcontractor under the Subcontract Documents and any other contract, including any contract between Subcontractor (or any of its subsidiaries or affiliates) and Contractor (or any of its subsidiaries or affiliates), whether related to the Project or otherwise. During such period such withheld amounts shall not accrue interest;
 - (ii) provide and/or supplement any labor and materials as Contractor shall determine to cure such Default and deduct the cost thereof from any sums otherwise due to Subcontractor under the Subcontract Documents or any other contract, agreement, or otherwise, including any contract between Subcontractor (or any of its subsidiaries or affiliates) and Contractor (or any of its subsidiaries or affiliates);
 - (iii) upon the appointment of a receiver for Subcontractor or upon Subcontractor making an assignment for the benefit of creditors or if Subcontractor seeks protection under the Bankruptcy Code or commits any other act of insolvency, Contractor may terminate this Agreement upon giving forty-eight (48)

hours written notice, by certified mail, to Subcontractor and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Subcontractor, Contractor may terminate this subcontract by giving forty-eight (48) hours written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee:

- (a) promptly cures all Defaults;
 - (b) provides adequate assurance of future performance;
 - (c) compensates Contractor for actual pecuniary loss resulting from such Defaults; and
 - (d) assumes the obligations of Subcontractor within the statutory time limits.
- (iv) terminate the Subcontract and any WO for Default, in which case Subcontractor assigns, conveys and transfers to Contractor all rights, title and interests in the following: (1) all contracts, whether written or oral, between Subcontractor and persons or entities providing labor, material or equipment pertaining to the Subcontract Work, and (2) all equipment, tools, materials or personal property of any kind located on a Project site at the time of termination.
- (v) take possession of all the materials, tools, equipment and appliances belonging to Subcontractor at the Project site without any further compensation to Subcontractor, and either complete Subcontractor's Work or contract with any other person or persons to complete Subcontractor Work and provide the material therefore; in which case if the unpaid portion of the amount to be paid under the Subcontract Documents exceeds the charges, expenses and damages sustained by Contractor in completing the Work or as a result of such Defaults, such excess shall be paid by Contractor to Subcontractor, but if such charges, expenses, and damages exceed said unpaid portion, Subcontractor shall pay the difference to Contractor immediately upon demand; or
- (vi) offset and apply any amounts due Contractor as a result of such Default against any earned but unpaid amounts owing to Subcontractor by Contractor under the Subcontract Documents, including without limitation, any retainage held by Contractor, any amounts owed to Subcontractor under any other contract, including any contract between Subcontractor (or any of its subsidiaries or affiliates) and Contractor (or any of its subsidiaries or affiliates), whether related to the Project or otherwise.

Prior to exercising the remedies in this Paragraph 16(b), Contractor shall provide Subcontractor written notice of Default with not less than two (2) working days to cure such default (unless the time to cure any Default is less than two days in the Prime Contract Documents, at which time the Prime Contract Documents will control). Contractor's remedies are cumulative, and the exercise of one remedy shall not restrict Contractor from exercising any other remedy set forth in this Agreement, or any right or remedy provided by equity or applicable law.

If a termination for default of this Subcontract is found not to have been warranted, the total compensation Subcontractor is entitled to recover shall be limited to the compensation that would have been payable to Subcontractor if the Subcontract had been terminated pursuant to Paragraph 16(c).

- (c) Termination for Contractor's Convenience. Contractor may at any time terminate any part of Subcontractor's services and work for Contractor's convenience. Such termination shall be by written notice to Subcontractor at Subcontractor's place of business. Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the Work and the placing of orders for materials, equipment and supplies in connection with the Work and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor, or at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such work as may be necessary to preserve and protect the Work already in progress and to protect material and equipment on the Project site or in transit thereto.

In the event of a Termination for Convenience, Subcontractor shall be entitled to payment of the following in full and final satisfaction of all Work and Claims by Subcontractor on a Project: (1) payment for that portion of the Work actually completed and materials actually delivered and accepted by Owner and Contractor, and only as to that portion of the Subcontract Price as allocated in the schedule of values for that portion of the Work performed, inclusive of profit, overhead, and general conditions allocated in the schedule of values for the Work completed, plus (2) such other costs actually incurred by Subcontractor as are payable to Contractor under the Prime Contract and approved by Owner; less (3) any amounts due Contractor, less (4) the amount of any payments made to Subcontractor prior to the date of termination. Subcontractor waives any other claims, including loss of anticipated profit in the event of such termination and payment.

- (d) Termination Right Under the Prime Contract. Contractor may also terminate this Subcontract or suspend the Subcontractor's Work for the same reasons Owner may terminate or suspend Contractor under the Prime Contract Documents. If the Prime Contract is terminated for the convenience of Owner, the termination settlement under this Subcontract shall be as provided in the Prime Contract Documents. Subcontractor shall not be entitled to receive any greater amount than Contractor may on behalf of Subcontractor recover from Owner for such termination. Subcontractor shall cooperate by timely providing a proper termination for convenience cost proposal, if requested by the Contractor.
- (e) If this Agreement or a WO, in whole or in part, is terminated for any reason, Subcontractor's warranties, guarantees and indemnities with respect to the Work performed through the termination date will survive the termination and be in full force and effect for the time period prescribed by the Subcontract Documents or law, whichever is longer. Subcontractor will, prior to final payment, provide all warranties and guarantees required by the Subcontract Documents with respect to the Work.
17. LABOR RELATIONS AND SUBCONTRACTOR EMPLOYEES. Subcontractor shall employ only competent, well-disciplined workers to perform the Work and Subcontractor agrees to immediately remove and replace any employee(s), including Subcontractor's superintendent, whom Contractor, Owner or Architect deems unsatisfactory. Subcontractor shall comply with all of the provisions of any collective bargaining agreements executed by or on behalf of Contractor. Subcontractor shall comply with all laws pertaining to unemployment compensation, workers' compensation, Social Security and employment, including but not limited to, all laws pertaining to immigration and prevailing wages. Contractor will not in any way be liable as an employer of, or on account of, any of the employees of Subcontractor. Contractor shall have no liability to Subcontractor for any costs, expenses or liability resulting from any stoppage of work, however caused, arising out of a labor dispute or controversy. Subcontractor shall be liable for any and all costs, including but not limited to compensatory and liquidated damages, resulting from work stoppages or other labor disputes associated with Subcontractor, Subcontractor's employees or the subcontractor(s) or suppliers of Subcontractor. Should there be picketing on Contractor's job site and Contractor establishes a reserved gate, it shall be the obligation of Subcontractor to continue the proper performance of Subcontractor's Work without interruption or delay.

18. MISCELLANEOUS PROVISIONS

- (a) ARCHITECT. The term "Architect" as used herein includes anyone appointed to be the Owner's designated representative to supervise on its behalf the work of the Contractor, or as otherwise set forth in the Prime Contract Documents.
- (b) TAXES. The compensation payable to Subcontractor as herein provided includes all sales, gross receipts, excise and other taxes and is not subject to any addition on account of taxes which are now or may hereafter be levied. Subcontractor is an independent contractor within the purview of the Internal Revenue Code, the Federal Social Security Act, and any and all unemployment insurance laws, both State and Federal, and is solely responsible to the Federal and State Government for all payroll taxes, deductions, and contributions under such laws.

- (c) **ASSIGNMENT**. Any assignment, subletting or delegation, by operation of law or otherwise, in whole or in part, by Subcontractor of the Subcontract Documents, of the Work, or of any Claims arising hereunder without the prior written consent of Contractor shall be void. Any assignment hereunder shall be subject to, and Contractor reserves, all rights and remedies possessed by or available to Contractor by law or under this Agreement as against Subcontractor, its sureties and assigns including, without limitation, rights of set-off, to retain moneys, to amend or modify this agreement, and to assert all other defenses and claims whether or not arising under this agreement. Contractor shall have the right in its sole discretion, and without Subcontractor's consent, to assign its rights and obligations under this Agreement, as well as any claims arising hereunder, as allowable under the applicable law.
- (d) **FAIR EMPLOYMENT**. The Subcontractor agrees to be bound by and comply with all applicable Fair Employment Practices, Provisions and Regulations of Federal, State or other Governmental authority having jurisdiction relating to nondiscrimination in employment, and any other provisions contained in the Subcontract Documents or required by applicable law.
- (e) **ENTIRE AGREEMENT**. The Subcontract Documents represent the entire agreement between the Parties and supersede any previous document including but not limited to Subcontractor qualifications, exclusions or other bid documents that the Subcontractor may have submitted to Contractor as well as any other prior representation, statement or agreement, oral or written, with regard to the subject matter herein. No modification hereto shall be valid unless it is in writing and signed by both parties, except for Contractor's unilateral change orders as set forth in Article 5 of this Agreement.
- (f) **WAIVER**. Waiver by Contractor of any particular Default by Subcontractor shall not affect or impair Contractor's rights in respect to any subsequent Default of the same or of a different nature.
- (g) **NOTICES**. All notices provided hereunder shall be in writing and mailed to the other party at the address stated on this Agreement or a WO.
- (h) **CONTRACTOR'S LICENSE**. If the Project is in California, Contractors are required by law to be licensed and regulated by the Contractors State License Board. Any questions concerning a contractor may be referred to the Contractors State License Board, 9821 Business Park Drive, Sacramento, California 95827. Mailing Address: P.O. Box 26000, Sacramento, California 95826. If the Project is located in any other State, then, to the extent the State in which the Project is located requires Subcontractor to be licensed, Subcontractor shall maintain any and all licenses required for it to perform such Work, and any failure to do so, shall be considered a material breach of this Agreement.
- (i) **SEVERABILITY**. If any provision of this Agreement shall be deemed invalid or unenforceable, the remainder of the Agreement, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- (j) **GOVERNING LAW AND VENUE**. This Agreement shall be enforced in accordance with the laws of the State where the Project is located, and venue for any legal action shall be in the State and County where the Project is located.
- (k) **MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES**. Neither Party shall be liable to the other for consequential damages incurred directly by either Party arising out of or related to a breach of this Agreement or a WO except that Subcontractor shall remain liable for indemnification and the duty to defend against any actual, consequential or liquidated damages that arise out of the Work of Subcontractor or a breach of this Agreement or a WO which are assessed or claimed against Contractor by third parties, including but not limited to the Owner, as well as for any such damages that are caused by an insurable event and covered by insurance.

- (l) **CONSTRUCTION OF AGREEMENT.** This Agreement shall not be construed as though drafted by either Party, and the Parties specifically covenant that the rule of construction of an agreement against its drafter, shall be inapplicable in the interpretation of this Agreement.
- (m) **ANNUAL COMPLIANCE WITH PREQUALIFICATION PROGRAM.** Subcontractor shall, on an annual basis, comply with Contractor's prequalification program.
- (n) **ELECTRONIC SIGNATURES.** Contractor may establish a procedure by which documents may be signed by the Parties using an electronic signature methodology designated by Contractor in its sole discretion. Such electronic signature methodology will be considered binding and may be relied upon by both Parties.

Accepted, upon the Terms and Conditions stated herein.

<p>SUBCONTRACTOR, Subcontractor</p> <p>By: _____</p> <p>Name, Title _____</p> <p>License No.:</p>	<p>SWINERTON BUILDERS, Contractor</p> <p>By: _____</p> <p>Name, Title _____</p> <p>License No.:</p> <ul style="list-style-type: none">AL: License No. 51879AZ: License No. ROC 088550, ROC 297261AR: License No. 0349530622CA: License No. 92CT: License No. MCO.0903780DE: License No. DE-2022000005609FL: License No. CGC1537550GA: License No. GCCO008605, GCCO008992HI: License No. CT-3753ID: License No. RCE-25689IA: License No. C125019MN: License No. IR797086MT: License No. 162342NE: License No. 46274-24NV: License No. 4045ANJ: License No. 720418NM: License No. 89083NY: License No. 24-64ES5-CRNC: License No. 73913ND: License No. 54055OR: License No. 78483RI: License No. 38954SC: License No. CLG119533TN: License No. 68711UT: License No. 227085-5501VA: License No. 2705152456WA: License No. SWINEB*992DR
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**License No. set forth in a WO will take precedence with respect to that WO and State.

SAMPLE

**MASTER SUBCONTRACT AGREEMENT
INSURANCE & BONDING REQUIREMENTS
InsertDateHere**

A. SUBCONTRACTOR INSURANCE REQUIREMENTS

This insurance document reflects the global agreement by the Subcontractor to provide the insurance required in this document whether the project is insured by a Wrap-Up Program (Contractor's PSI, PLP or UPP, or an Owner OCIP) or if no Wrap-Up in place for the project. The individual projects will have project specific insurance attachments that may differ from this document. The project specific insurance attachment will take precedence over this document.

1. Subcontractors must provide other insurance

In addition to its participation in Contractor's Wrap-Up program more fully defined later or an Owner OCIP, Subcontractors shall, at their own expense, maintain in effect not less than the coverages and limits of insurance outlined in Section B which shall be maintained with insurers, policy forms and deductibles satisfactory to Contractor. If Subcontractors use existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Subcontractors agree to amend, supplement or endorse the existing coverage to do so, at no additional cost to Contractor. Contractor may withhold future progress payments if these insurance requirements are not met.

2. The Subcontractor's enrollment status in the project wrap-up program impacts the coverages which the Subcontractor must provide:

If the Subcontractor **is not** enrolled in the project wrap-up program, then the coverages in Section B must be provided in full for operations both at the jobsite and off-site work.

If the Subcontractor **is** enrolled in the project wrap-up program, then the following coverages in Section B must be evidenced, with the exception of Workers' Compensation, when provided by the wrap-up program; and the General Liability/Excess coverage requirements will apply only to off-site exposures.

B. INSURANCE REQUIREMENTS

1. Subcontractor shall, at its own expense, maintain in effect not less than the following coverages and limits of insurance which shall be maintained with insurers, policy forms and deductibles satisfactory to Contractor and the Owner. If Subcontractor uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Subcontractor agrees to amend, supplement or endorse the existing coverage to do so, at no additional cost to Contractor.

Certificates and Endorsements shall name the following Certificate Holder and address:

**Swinerton Builders
Attn: Risk Management
2001 Clayton Road, 7th Floor
Concord, CA 94520**

a) Workers' Compensation and Employer's Liability Insurance

State Workers' Compensation - coverage as required by law.

Employer's Liability with limits not less than each of the following:

\$1,000,000 each accident for bodily injury;
\$1,000,000 policy limit for bodily injury by disease;

\$1,000,000 each employee for bodily injury by disease.

Waiver of Subrogation Endorsement is required in favor of Contractor and the Owner of the project as outlined in the project specific insurance attachment.

b) **General Liability and Umbrella/Excess Insurance**

Subcontractor shall carry a Commercial General Liability Policy provided on or equivalent to ISO CGL Form No. CG 00 01 12 07. Policy must include coverage for premises operations, completed operations, contractual liability and broad form property damage. Subcontractor shall provide limits as required for your trade in accordance with subsection i or ii below. If the policy is in excess of a Subcontractor SIR (self-insured retention), the amount of such SIR must be clearly identified on the Certificate of Insurance. Contractor reserves the right to reject the application of such SIR, or require the Subcontractor to provide a bond on the SIR at no additional cost to Contractor.

i) **Specified Trades or any Party Not Enrolled in a Wrap-Up program:**

(Defined as Excavation, Shoring, Demolition, Crane related work, Exterior Skin, Steel Erection, Roofing, Waterproofing, Fire Protection, Mechanical, Electrical and Plumbing, Metal Decking over three (3) stories, or other trades as Contractor may specify). Contractor reserves the right to amend the required limits of insurance commensurate with the Subcontractor's risk. The Limits of Liability for Bodily Injury and Property Damage under this section shall not be less than:

\$10,000,000 each Occurrence;
\$10,000,000 Products/Completed Operations Aggregate;
\$10,000,000 General Aggregate – Per Project -.

ii) **Tower Crane Operator:** The Limits of Liability for Bodily Injury and Property Damage under this section shall not be less than:

\$20,000,000 each Occurrence;
\$20,000,000 Products/Completed Operations Aggregate;
\$20,000,000 General Aggregate – Per project-.

iii) **All Other Trades:** The Limits of Liability for Bodily Injury and Property Damage under this section shall not be less than:

\$2,000,000 each Occurrence;
\$2,000,000 Products/Completed Operations Aggregate;
\$2,000,000 General Aggregate – Per project-.

c) **Automobile Insurance**

\$1,000,000 C.S.L. (Combined Single Limit) and shall cover owned, hired and non-owned automobiles.

d) **Umbrella/Excess Insurance** – If needed to meet the requirements of a, b, and c above.

e) **Professional Liability Insurance (Errors and Omissions)**

All Subcontractors with design responsibility shall provide the following additional coverage: A Professional Liability Policy (Errors and Omissions) with Limited Contractual Liability Coverage in favor of Contractor and Owner and Self-Insured Retention (SIR) no greater than \$50,000 per claim, and a Waiver of Subrogation in favor of Contractor and the Owner. This insurance shall be maintained for not less than the duration of the project and five (5) years following completion of construction. Retroactive date of such policy must be on or before the date Subcontractor began offering professional services. Limit of liability shall be not less than \$1,000,000 Per Claim. Contractor has the right to increase this requirement for any high risk design work.

f) **Pollution Liability Insurance**

When these coverages are required, policy will contain an Additional Insured and Waiver of Subrogation endorsement in favor of Contractor.

Asbestos and/or Lead Liability: If work contemplates asbestos or lead abatement, Subcontractor shall provide such insurance coverage on an occurrence basis for claims arising out of abatement, removal, storage, transportation and disposal activities with a limit of liability not less than \$5,000,000 per occurrence.

Environmental Impairment Liability: If work contemplates handling or hauling other pollutants, subcontractor will provide insurance to coverage, among other things, claims arising out of all hazardous material and hazardous waste remediation, storage, transportation, and disposal. Such insurance shall be written on an occurrence basis with no sunset clause, or on a claims-made basis with a minimum 5 year extended reporting period (tail) with limits of not less than \$5,000,000 each Occurrence (if written on an occurrence basis) or, \$5,000,000 each Claim (if written on a claims-made basis).

Mold Liability: Any work that includes EIFS, curtain wall exterior or plumbing, Subcontractor shall provide evidence of Pollution Liability insurance including liability coverage for mold related claims. Such insurance coverage shall be written on an occurrence basis with no sunset clause, or on a claims made basis with a five (5) year extended reporting provision with limits not less than \$1,000,000 per claim or per occurrence.

g) **Stored Materials Insurance/Personal Property of Others**

If Subcontractor is responsible for project-specific materials and/or equipment prior to such goods arrival at the jobsite, Subcontractor shall maintain a property policy for the replacement value of such goods. If Subcontractor is permitted to bill for such materials and/or equipment, evidence of coverage including a Loss Payee endorsement in favor of Contractor, Owner and any other party required by the prime contract shall be provided.

2. The General Liability and Umbrella/Excess and shall contain the following:

a) Project Specific Additional Insured Listing:

“Contractor” named in this Agreement (Swinerton Builders), its parent and affiliated companies;
Owner (as outlined in the project specific insurance attachment)
Other parties as required by Owner and/or necessitated by construction activities.

b) An Additional Insured Endorsement adding as an additional insured each party noted in Section 2a of this attachment, or otherwise identified in the Prime Contract, as respects liabilities arising out of Subcontractor’s work under this contract (including Products/Completed Operations) on the ISO CGL Endorsements CG 20 10 10 01 and CG 20 37 10 01 or endorsements affording equivalent coverage.

c) Primary Insurance Clause - The insurance coverage required hereunder and/or provided by the Subcontractor apply on a primary basis with any other insurance policy(s) of Contractor, the Owner and those additional insured entities as identified in the Prime Contract being excess and not contributing. Such Primary Insurance Clause shall be included on the Additional Insured Endorsement.

d) Waiver of Subrogation Endorsement is required in favor of Contractor and the Owner.

e) Cross Liability coverage as would be achieved under the standard ISO separation of insureds clause.

- f) Provision or endorsement stating that such insurance, subject to terms and conditions usual to Standard General Liability and Umbrella/Excess Liability Policies, applies to the liability assumed by Subcontractor under this contract.
3. Modified Occurrence Liability Policies are **not** acceptable. Claims Made General Liability Policies are **not** acceptable. Subcontractors providing such insurance will be considered in default of the requirements of this Subcontract Agreement.
 4. On execution of the Work Order and prior to commencement of work, Subcontractor shall file on forms acceptable to Contractor a certificate of insurance properly executed and signed by an authorized representative on behalf of the insurer(s) evidencing the above coverages and conditions to Contractor. Subcontractor shall maintain the required Insurance and Additional Insureds for the period of time for which the Subcontractor may be held legally liable for its work. Also, the required Certificates of Insurance and Additional Insured Endorsements shall be provided and maintained during warranty period of the Subcontractor's work. Subcontractor further agrees, upon written request by Contractor or Owner, to furnish copies of such policies, certified by an authorized representative of the insurer(s).
 5. All Insurance coverage provided by the Subcontractor shall be through acceptable insurance carriers licensed in the state(s) where work is being performed with a minimum A.M. Best Company standard of A-:VII or greater.
 6. Subcontractor will provide written notice to Contractor and Owner at least thirty (30) days prior to termination, non-renewal, cancellation or reduction of coverage in the policy.
 7. Subcontractors will be required to participate in Wrap-Up and Builder's Risk policy deductibles as outlined in Subcontract terms and documents.

C. CONTRACTOR PROVIDED INSURANCE

1. A Wrap-Up Insurance Program ("PSI, PLP or other") may be implemented for a project under this Agreement, wherein all designated Subcontractors and Subcontractors of any tier ("Subcontractors") will be required to participate as further described in this Attachment and in the accompanying PSI, PLP or UPP Manual. You will be notified of this insurance program by Contractor. You may request copies of program policies for further details of coverage.
2. The PSI Program provides to approved Subcontractors the following insurance coverages with the following limits:
 - On-Site Workers' Compensation/Employers' Liability:
As required by statute; including \$1 million employers' liability
 - On-Site General Liability with limits specific to the project:
\$2 million per occurrence
\$4 million general aggregate
\$4 million completed operations aggregate
 - PSI - On-Site Excess on a following form basis specific to the project:
\$30 million
 - 10-year Completed Operations tail following substantial completion.
 - Subcontractors will have deductible responsibility as outlined in PSI program manual.
3. The PLP Program provides to approved Subcontractors the following insurance coverages with the following limits:
 - On-Site General Liability with limits of:

\$2 million per occurrence specific to the project
\$4 million general aggregate specific to the project
\$4 million completed operations aggregate applies to all projects, reinstates annually during construction
\$20 million general aggregate CAP for all PLP projects

- On-Site Excess Liability with limits of:
 - \$150 million per occurrence and aggregate specific to the project during construction
 - \$150 million per occurrence and aggregate for all PLP projects for the completed work
- 10-year Completed Operations tail following substantial completion.
- Subcontractors will have deductible responsibility as outlined in PLP program manual.

4. Owner, Contractor, and Subcontractors are Insureds

Contractor shall procure and maintain during the life of the project a Project Specific Insurance (“PSI, PLP or UPP) program which includes the aforementioned types and amounts of insurance and naming as insureds the Owner, Contractor, and enrolled Subcontractors (but excluding Suppliers and Vendors). Said insurance shall apply only to the operations of the insureds in the performance of the Work at the job site. The PSI , PLP or UPP coverages, procedures and responsibilities of all Subcontractors designated to participate in the PSI , PLP or UPP are outlined in the Project Wrap Manuals. With the execution of this Agreement the Subcontractor acknowledges receipt of, review of and familiarity with the Manual and the requirements contained therein.

5. PSI , PLP or UPP coverage does not apply to vendors, truckers and other parties

No insurance coverage provided by Contractor under the PSI , PLP or UPP programs shall extend to the activities or products of suppliers, material dealers, vendors, haulers, off-site fabricators, truckers and others whose employees perform no on-site work or are engaged solely in the loading, unloading, stocking, testing or hauling of equipment, supplies or materials. Such persons or entities shall be required to provide their own insurance.

6. Subcontractor must provide accurate insurance information under the PSI , PLP or UPP

Subcontractors shall provide and warrants the accuracy of the information provided on the “PSI , PLP or UPP Application Worksheet” and agrees that Contractor, their Insurance Representative and/or the PSI , PLP or UPP Insurance Carriers may, but are not required to, audit the Subcontractors’ records to confirm the accuracy of any insurance data. Subcontractors warrant and agree that Contractor is entitled to and may collect additional insurance premiums as may be developed as a result of said audits and or changes/change orders as may be agreed to in connection with the Work. Subcontractors further agree to provide Insurance Records, Policies, Declaration Pages of Policies, and all appropriate Insurance Rating Information, Certificates of Self-Insurance and such other documents as may be requested in order to assure the accuracy of insurance data. If these items are not furnished, the subcontractor agrees to a charge 3.25%/PSI or 2%/PLP & UPP of contract value for their participation in the program.

Additionally, Subcontractors shall furnish to Contractor, their Insurance Representative or the Insurance Carrier, all information and documentation which Contractor may require from time to time in connection with the issuance of any policies pursuant to PSI , PLP or UPP programs in such form and substance as Contractor or its designee may prescribe or require including above referenced documentation for all policies renewing while under this subcontract.

7. Subcontractors assign all return premiums

Subcontractors assign to Contractor all return premiums, premium refunds, dividends and other monies due or to become due in connection with the insurance which Contractor provides under the PSI , PLP or UPP program, all of which shall inure to the benefit of Contractor. The Subcontractors shall execute such further documentation as may be required by Contractor to effectuate this assignment.

8. Subcontractors must provide timely payroll information

Subcontractors shall furnish to Contractor, their Insurance Representative or the Insurance Carrier, job site payroll reports as described in the PSI Manual, and permit Contractor, their Insurance Representative and/or the Insurance Carrier to audit Subcontractors books and records and provide documentation as may be required to assure accuracy of those payroll reports and/or for the purpose of unit statistical filing with the WCIRB/NCCI by the insurer, on behalf of the subcontractor.

Subcontractors agree that their failure to submit documents as required may result in withholding payments until said payroll reports are received by Contractor or their designee. Payroll reports are due to Contractor by the 8th of each month.

9. Subcontractor must cooperate with insurance representatives

Subcontractors shall promptly comply with the requirements, obligations and recommendations of Contractor, their Insurance Representative or Insurance Carrier, so that the PSI , PLP or UPP may be properly administered and so that the Insurance Carriers will continue to provide the coverage under the PSI , PLP or UPP program. If Subcontractors should fail to comply with any requirement, obligation or recommendation, Contractor may withhold any payments due the Subcontractors until such time as they shall have performed the requirements, obligations and recommendations as required by this Agreement, or by the insurance policies.

10. Subcontractors must cooperate in claims management and return to work issues

Subcontractors shall assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of their operations conducted under or in connection with the work and shall cooperate with Contractor, their Insurance Representative and/or Insurance Carrier with the adjustment, settlement, arbitration or litigation of all said claims, including but not limited to providing light or modified duty for injured workers, appearances in arbitration or court proceedings and/or participating in settlement conferences as may be required.

11. Subcontractor is responsible for its lower-tier subcontractors compliance

Subcontractors agree to include the Work Order Insurance Requirements and accompanying PSI , PLP or UPP Manual, in their entirety, in any lower-tier subcontract executed by them for any part of their scope of work to be performed by them or said Subcontractors under this contract and agree to enforce all requirements, obligations and recommendations as specified in the Work Order Insurance Requirements, including but not limited to the completion of all required and necessary PSI , PLP or UPP enrollment forms, change order forms, insurance applications, prompt and full compliance with all audit requests, claim reporting and adjustment/settlement procedures and full participation in and compliance with safety, loss prevention and control programs implemented by or at the request of Contractor, their Insurance Representative, the Insurance Carrier and/or as required by any local, state or federal laws. Subcontractor is responsible for its lower-tier subcontractors compliance with the requirements of the Work Order Insurance Requirements, and the accompanying Manual.

12. Only PSI/CSI or PLP Coverages are being provided – No limitation of indemnity

No type of insurance other than that set forth above and in the PSI , PLP or UPP Manual shall be furnished by Contractor. The furnishing of insurance under the PSI , PLP or UPP by Contractor shall in no way relieve, nor be construed to relieve, Subcontractors of any responsibility or indemnity obligation whatsoever otherwise imposed by the Subcontract Documents. Additionally, nothing shall be construed as implying that any coverage(s) will be provided by Contractor other than as outlined in the actual PSI , PLP or UPP insurance policies.

13. Subcontractor waives indemnity/subrogation for covered claims

Subcontractor, on its own behalf and on behalf of anyone claiming by, through or under Subcontractor, whether by way of subrogation or otherwise, hereby waives indemnity and/or subrogation rights which they may now or hereafter have in connection with the performance of the Work to the extent such

subrogation rights are not the result of any intentional wrongful act of omission of the party causing such loss. Furthermore, Subcontractor hereby waives any indemnity and/or subrogation rights for any claims or cause of action for which the PSI , PLP or UPP policies provide coverage.

14. Subcontractor shall comply with insurance deduction or billing

The PSI , PLP or UPP Application Worksheet (located in the Manual) estimates the value of insurance premiums within the Subcontractors' bid, and/or Subcontract Agreement value. The value of such insurance shall be verified through the use of payroll reports and audit, if requested by Contractor. Further, the value of such insurance premiums identified by the PSI , PLP or UPP Application Worksheet or otherwise calculated through audit shall be removed by a credit memo to the Subcontractors. Original Subcontract shall be executed including the value of the insurance premiums identified in the PSI , PLP or UPP Application Worksheet.

15. Insurance Other Than PSI , PLP or OCIP

Contractor may have the option of purchasing a Wrap-Up program specifically for an individual project. In that case, the Work Order Insurance Requirements and Insurance Manual will outline the coverages provided by that program (UPP).

D. BONDING REQUIREMENTS (If required in Work Order)

1. Payment and Performance Bonds to be in the amount of 100% of the contract.
2. Contractor bond forms are issued with this Agreement. These are the **only** forms that will be accepted and must appear without revision. Forms must be signed and notarized for both Principal and Surety. Exhibit A-2 is samples of the payment and performance bonds.
3. Surety Bond Carriers will be deemed acceptable if listed in the most current United States Department of the Treasury – Federal Register for a treasury limit not less than the amount of the contract or if approved by Contractor.
4. For all change orders causing additions greater than either \$100,000 or 50% of the previously bonded amount of the Work Order, Subcontractor will be responsible for obtaining Consent of Surety in the form of an increase rider which shall increase the original bond to an amount equal to the new Work Order amount.
5. Premiums are to be paid by Subcontractor and included in the Subcontract Sum.

BOND NO. _____
PREMIUM _____

SUBCONTRACT PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, That we «**SUBCONTRACTOR**», as Principal, and _____ as Surety, are held and firmly bound unto **CONTRACTOR** as Obligee, in the penal sum of «**CONTRACTAMT1**» and no/100 dollars (\$«**CONTRACTAMT2**») lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH, That Whereas, the Principal entered into a certain agreement which is hereto attached and made a part hereof, with the Obligee dated «**SUBCONTRACTDATE**», for labor, material, equipment and services, complete plans, specifications, addenda thereto and in accordance with Subcontract No. «**SUBCONTRACTNO**» being part of the work covered by a contract dated on or about «**CONTRACTDATE**», between «**OWNERNAME**», «**OWNERADDRESS**», hereinafter called Owner, and the said Obligee for «**PROJECTNAME**», «**PROJECTADDRESS**», which contract and the specifications and general conditions thereof are hereby incorporated herein and shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, if the said Principal shall pay promptly and in full the claims of all persons, firms or corporations, performing labor or furnishing equipment, materials, or supplies incurred in connection with the contract to be performed under said agreement, and shall indemnify and save harmless the Obligee from all loss, liability, costs, damages, penalty, attorney's fees or expenses for all taxes, insurance premiums, any and all applicable contributions, allowances or other payments or deductions, however termed, required by statute or union labor agreement, including voluntary payment thereof by the Obligee necessary to insure orderly prosecution of work or other items or services used in, upon or for or incurred in connection with the contract to be performed under said agreement, then this obligation shall be of no effect, but otherwise it shall remain in full force and effect.

It is a condition hereof that any change, alteration, modification or amendment of any nature whatsoever that may be made in the terms of said agreement, any change in the character or scope of the work to be performed, or the method of performance, under said agreement or modification of said agreement or in the time for completion thereof, any change in the manner, time or amount of payment as provided therein, any change of any nature whatsoever that may be made in the terms of the contract between the said Obligee and the Owner or any change that may be made in the performance of the work under said agreement by the Principal, assented to by the Obligee, whether made under express agreement or not, may be made without notice to the Surety and without affecting the obligations of the Surety on this bond and without requiring the consent of the Surety, and no such change or changes shall release the Surety from any of its obligations hereunder, the Surety hereby consenting to and waiving notice of any such change, alteration, modification or amendment.

Subject to the priority of the named Obligee with respect to recovery up to the penal sum of this bond, persons who have supplied or furnished labor, material machinery, equipment or supplies to the Principal for use in the prosecution of the work provided for in said contract shall have a direct right of action against said Principal and Surety under this bond.

IN WITNESS WHEREOF, the said Principal and Surety have hereunto set their hands and seal, this _____ day of _____, 20__.

PRINCIPAL: _____
Signature

Name & Title: _____

SURETY: _____
Signature

Name & Title: _____

BOND NO. _____
PREMIUM _____

SUBCONTRACT PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That we «**SUBCONTRACTOR**», as Principal, and _____ as Surety, are held and firmly bound unto **CONTRACTOR** as Obligee, in the penal sum of «**CONTRACTAMT1**» and no/100 dollars («**CONTRACTAMT2**») lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH, That Whereas, the Principal entered into a certain agreement which is hereto attached and made a part hereof, with the Obligee dated «**SUBCONTRACTDATE**», for labor, material, equipment and services, complete per plans, specifications, addenda thereto and in accordance with Subcontract No. «**SUBCONTRACTNO**» being part of the work covered by a contract dated on or about «**CONTRACTDATE**», between «**OWNERNAME**», «**OWNERADDRESS**» hereinafter called Owner, and the said Obligee for «**PROJECTNAME**», «**PROJECTADDRESS**» which contract and the specifications and general conditions thereof are hereby incorporated herein and shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, if the said Principal shall fully indemnify and save harmless the Obligee from all loss, liability, costs, damages, penalty, attorney's fees or expense which Obligee may incur by reason of failure to well and truly keep and perform each, every and all of the terms and conditions of said agreement on the part of the said Principal to be kept and performed, including but not limited, to completion within the time specified of all work covered by said agreement, performance of all obligations, and guarantees of the Obligee relating to such work under the contract with the Owner; then this obligation shall be of no effect, but otherwise it shall remain in full force and effect.

It is a condition hereof that any change, alteration, modification or amendment of any nature whatsoever that may be made in the terms of said agreement, any change in the character or scope of the work to be performed, or the method of performance, under said agreement or modification of said agreement or in the time for completion thereof, any change in the manner, time or amount of payment as provided therein, any change of any nature whatsoever that may be made in the terms of the contract between the said Obligee and the Owner or any change that may be made in the performance of the work under said agreement by the Principal, assented to by the Obligee, whether made under express agreement or not, may be made without notice to the Surety and without affecting the obligations of the Surety on this bond and without requiring the consent of the Surety, and no such change or changes shall release the Surety from any of its obligations hereunder, the Surety hereby consenting to and waiving notice of any such change, alteration, modification or amendment.

It is a further condition hereof that no other than the named Obligee and the successors, administrators, or assigns of the Obligee shall have the right of action under this bond.

IN WITNESS WHEREOF, the said Principal and Surety have hereunto set their hands and seal, this _____ day of _____, 20__.

PRINCIPAL: _____
Signature
Name & Title: _____
SURETY: _____
Signature
Name & Title: _____

**MASTER SUBCONTRACT AGREEMENT
MINIMUM SAFETY, HEALTH, ENVIRONMENTAL REQUIREMENTS
DATE**

Contractor constantly strives to provide a safe and productive work environment. The following items are intended as Contractor's requirements for Subcontractor compliance with environmental, health, and safety laws and recognition of safe work practices. This section is **not** intended as a complete safety program in itself. Subcontractor is required to conduct a complete Safety and Injury Illness Prevention Program (IIPP) in full cooperation with Contractor's program. (See also Terms and Conditions of the Subcontract Documents.)

- A. GENERAL EXPECTATIONS.** Subcontractors shall develop and maintain safety, health and environmental programs and procedures that meet or exceed Federal, State, and Local laws, regulations and standards. They shall also agree to comply with any Owner and/or Contractor site-specific requirements. The Subcontractor shall be able to provide reasonable documentation to demonstrate compliance with minimum performance standards (MPS). Prior to mobilization the Subcontractor shall provide a completed MPS checklist to demonstrate awareness and compliance with the MPS to the Contractor Project Team. No work will begin until this is completed.

Subcontractors shall make Contractor immediately aware of any unique safety, health, or environmental concerns related to their work and make timely efforts to notify other affected contractors working on site and protect the public from hazards.

The MPS compliance shall be expected of any additional tier Subcontractors under the first tier Subcontractor's control. Subcontractors shall be responsible for the content and cost of any training required by the MPS, and shall document that the training is completed before the job starts.

Subcontractors shall be responsible for costs related to fines and citations issued by regulating agencies to them and others caused by or related to their work.

Subcontractor shall perform and document pre-job and pre-task planning to identify any hazards related to their work. This shall be available for inspection by Contractor at any time.

- B. STAFFING REQUIREMENTS AND EXPECTATIONS.**

DSP

A Designated Safety Person (DSP) shall be assigned to coordinate project safety requirements regardless of staffing levels. If the project requires more than one shift, each shift will require a DSP. The DSP shall be trained in emergency procedures. If the project develops a Safety Committee, the Subcontractor shall make a representative available to participate in committee activities. DSP's will be made available for any site specific training or certification programs initiated by Contractor. DSP's shall have completed, or be scheduled to complete, OSHA 10-hour and First Aid/CPR certifications prior to assignment of DSP duties.

Supervisor

When staffing levels reach 5 or more workers, the Subcontractor shall provide at least one OSHA 10-hour and First Aid/CPR trained supervisor while they have crews mobilized on the project. The supervisor may or may not be the same person who is the DSP.

Full-Time Safety Person

A dedicated Full-Time Safety Person (FTSP) acceptable to Contractor will be provided when Subcontractor staffing levels reach 30 employees. The FTSP shall be trained to the same level as the DSP. Additional FTSP or DSP's may be required if an operation is considered high hazard.

High Hazard operations include, but are not limited to:

- Steel Erection
- Decking
- Demolition
- Trenching/Excavation Operations
- Engineered Shoring Operations
- Engineered Formwork Operations
- Concrete Placement Operations
- High Energy or High Voltage Operations above 600 volts

First Aid/CPR

Subcontractor shall provide an adequate number of First Aid-trained personnel to respond to emergency events. Contractor shall be notified of any changes in First Aid/CPR staffing during the project, Subcontractors shall provide Contractor a site-specific emergency plan identifying First Aid/CPR staff, First Aid equipment, and the nearest medical clinic and hospital.

- C. **ORIENTATION AND TRAINING.** Subcontractor's employees shall receive a site-specific safety orientation at initial assignment. If a site-specific safety orientation is provided by Contractor, Subcontractors shall require their workers to participate and Subcontractor is responsible for the cost related to participating, if any.

Subcontractor shall document employee attendance at site-specific safety orientation and make a copy of such documentation available to Contractor. In addition, Contractor and other subcontractors shall be made aware of any special training required as a result of Subcontractor's activities.

Subcontractors are responsible for all safety, health and environmental training related to their work. Additionally, the Subcontractor agrees to require its employees to participate in regular safety activities such as Daily Huddles or Stretch and Flex programs if the Project Owner or Contractor conduct these on a specific project. Subcontractor is responsible for the cost related to participating, if any.

- D. **SAFETY MEETINGS.** Subcontractors will conduct weekly safety meetings for their crews in compliance with OSHA standards, which address the specific hazards of their trade. Subcontractors are to provide the Contractor Project Team with a copy of their safety meeting report. In addition, Subcontractor personnel will attend any meeting scheduled by the Contractor Project Team related to safety.

Subcontractor's superintendent, foreman, or DSP shall be represented at all of Contractor's scheduled safety/coordination meetings.

- E. **DAILY PRE-TASK PLANNING AND JOB HAZARD ANALYSIS.**

Note: High Hazard Work requires both a Pre-Task Plan and a Job Hazard Analysis.

Daily Pre-Task Plan (PTP)

Subcontractor shall perform and document Daily PTP to identify hazards related to their work. The PTP shall identify the tasks involved in each step of Subcontractor's work, hazards associated with each step and how Subcontractor intends to protect itself, other trades, and the public. PTP's must be completed prior to starting a task. Subcontractor PTP's shall be available for review by Contractor at any time.

Job Hazard Analysis (JHA)

Subcontractor shall perform a JHA for any High Hazard Work (HHW). The following list of examples is not intended to be all-inclusive of HHW. Rather, it is a guideline of types of work for which a JHA is required:

- Energized Electrical Work, including Electrical Systems Testing
- Partially Completed (Energized) Electrical Rooms
- Work near Energized Power Lines
- Work on live pressurized utilities (Hot Taps, Freezing Lines)
- Demolition or Construction within Operating Facilities
- Demolition or Construction around Live Utilities
- Hot work within or adjacent to operating facilities
- All Crane Picks
- Man-Lifts, Tower Cranes
- Operations requiring a Competent Person (Excavations, Confined Space, Scaffolding)
- Engineered Shoring Operations
- Engineered Formwork Operations
- Engineered Fall Protection Systems
- Elevated Work requiring Personal Fall Protection
- Elevated Formwork, Flying Tables, etc.
- Roofing
- Steel Erection, Metal Decking, Stair Erection
- Concrete Placement Operations involving a Crane or Confined Space
- Pre-cast or Pre-Fabricated Exterior Systems
- Tilt-up Concrete Panel Hoisting
- Falling Object Protection Measures
- Deep Foundation Work
- Blasting
- Falsework/Shoring/Underpinning Systems
- Work Adjacent to Sensitive Environments
- Hazardous Material Abatement, Tank Removal
- Work near Freeways, High Traffic Areas
- Work with High Public or Pedestrian Exposure
- Work near Rail Road Lines or Public Transportation
- Work near Landfills
- Work over Water

To complete a JHA, the Subcontractor shall perform an examination of the equipment and conditions of the area in which the job is to be performed, list specific job steps, identify potential hazards, identify mitigations to hazards and list required PPE. The Contractor JHA Worksheet should be used to complete the JHA. Alternatively, the Subcontractor may use its own form if it contains all required information. The JHA implementation process is as follows:

- JHAs shall be prepared by the Subcontractor's supervisor with assistance from other members of the crew (all members must have appropriate prior field experience)
- Involves High Hazard Work, although can be used for other activity analysis
- May require research, engineering calculations, outside consultation, or special training
- Prepared at least two (2) weeks in advance

- Safety Meeting and JHA review shall occur immediately preceding the work activity with individual crew members.
- Stop and re-evaluate the JHA when conditions change, new employees are added to the task or an incident/injury occurs.
- Completed copies of JHAs shall be maintained at the project site for periodic review by Contractor project personnel.
- After project completion, the JHA should remain accessible – written or electronically – for future reference.

F. **BARRICADES AND PERIMETER PROTECTION.** Subcontractors shall ensure that all of their jobsite personnel understand that removal of barricades and other perimeter protection or floor hole coverings must have prior approval from the Contractor Project Team. Subcontractor personnel are responsible for returning to proper condition and maintenance, any barricade or perimeter protection removed because of their work. The Subcontractor is responsible to notify all trades affected, and will be solely responsible for area and worker safety during the period of temporary removal.

G. **INJURY AND ACCIDENT REPORT.** Under the Terms and Conditions of Contractor's Subcontract Agreement, all Subcontractors are required to notify Contractor Project Superintendent immediately of any incident/accident and furnish, within 24 hours, a written report. Notification shall include copies of all reports of any injury to their employees and/or accidents involving other people or property damage caused by their actions. Subcontractors should have post-incident drug testing procedures.

Subcontractors shall make every effort to accommodate workers with restricted work activities prescribed by Medical Doctors treating work-related injuries. Subcontractors should have transitional work available and cooperate fully with any site-specific return to work programs for injured workers. In the event of media involvement, Subcontractors will cooperate with Contractor or Owner Crisis Management efforts.

H. **AUDITS AND INSPECTIONS.** Subcontractors shall conduct and document daily safety audits of their work areas and shall cooperate with any regulatory agency consultation or compliance inspections.

I. **ENFORCEMENT.** A plan for disciplinary action for violation of known safety requirements shall be part of Subcontractor's IIPP.

Subcontractors shall participate in any "Stop Work for Safety" program established on site by Contractor.

J. **FIRE AND FLAMMABLE MATERIAL.** The following items represent basic fire control procedures to be followed by all Subcontractors:

1. Flammable liquids and/or combustible solids are to be stored only in properly labeled, approved, closed, secured metal containers.
2. Combustible waste materials are to be picked up and properly disposed of at least once a shift and more often if necessary.
3. Locate extra fire extinguishers near welding operations.
4. Oxygen cylinders in storage shall be separated from fuel-gas cylinders or combustible materials (especially oil or grease), a minimum distance of 20 feet or by a noncombustible barrier at least 5 feet high having a fire resistance rating of at least one half hour.
5. Control or contain welding, cutting, or grinding sparks; provide necessary fire watch.
6. Contractor shall be notified immediately of any explosive material brought on the project site.
7. The amount of flammable/combustible liquids stored for use in temporary containers shall be limited to what will be used in one shift.

- K. **HOUSEKEEPING.** Each Subcontractor is responsible for clean-up and removal of their debris, excess material, empty product containers, trash, and tools on a **daily** basis. All work areas shall be kept clean at all times. Failure to perform this function will result in the Subcontractor being charged for clean-up performed by others.
- L. **HAZARDOUS WASTE.** Subcontractor is responsible for the generation, management, and proper disposal of any flammable explosives, ignitable liquids, radioactive materials, toxic substances, or any related materials or substances, including, without limitation, any substance defined as or included in the definition of "hazardous wastes" under any applicable federal, state or local law, regulation or ordinance.

The Subcontractor agrees not to bring hazardous wastes on site or generate hazardous waste without the knowledge and consent of Contractor.

Exception: Small quantities, (less than 4 liters total and 1 liter in any single container) AND the hazardous materials are totally consumed or removed during the shift. In this case the work must be performed without any emission or discharge to the air, soil, storm drains, or exposure to other workers.

Note: The Tenant and Landlord shall have the right to use, generate and store on the Premises and the building, and transport to and from the premises and the building, those hazardous materials which are generally used in the ordinary course in first class office buildings (collectively, "permitted materials") provided, however, that Tenant's and Landlord's use, generation, storage and transport thereof is in compliance with all applicable federal, state and local laws, regulations and ordinances.

Subcontractors are responsible for Proposition 65 (California only) notification requirements, codes and regulations, and for maintaining a list of all materials containing hazardous substances. A complete list of these materials and copies of the SDS (Safety Data Sheet) are to be given to Contractor no later than the first day said materials are brought on the site.

Subcontractors are responsible for training and documenting their employees training in the proper safety precautions for use and disposal of said materials. Furthermore, Subcontractors using hazardous materials shall notify other Subcontractors' field supervisors and employees of their use and maintain proper controls to eliminate their exposure to said materials. It shall be the responsibility of the Subcontractor to maintain all hazardous substances in properly identified containers kept in properly controlled areas.

The removal from the site of excess materials or disposal of waste materials is the sole responsibility of the Subcontractor.

- M. **PROJECT SAFETY INSPECTIONS AND ENFORCEMENT.** Safety Hazard Notices (See Contractor IIPP) will be sent to Subcontractors observed violating safety regulations. Failure to correct conditions that are noted on a safety hazard notice places the offending Subcontractor in violation of their contract. This may result in progress payments being withheld until the conditions noted are corrected. If the hazard is serious, Contractor may be forced to stop all of the offending Subcontractor's work activities until the hazard is corrected at the Subcontractor's expense.

Subcontractors will be directed to remove from the project, any employee who refuses to comply with or has been observed deliberately violating safety regulations.

- N. **TEMPORARY POWER.** Temporary power 15- and 20-amp service shall be protected by Ground Fault Circuit Interrupters (GFCI).

Temporary power cords shall be heavy-duty construction grade. Cords less than #14 AWG will not be allowed on

site.

- O. **CONTROLLING ENERGY HAZARDS - LOCKOUT/TAGOUT (LOTO)**. Any applicable Contractor policies or operating procedures apply in addition to the standards applicable to the control of energy during servicing and/or maintenance, and/or start-up of machines, equipment, and circuits. Any applicable Contractor policies or operating procedures also apply to servicing and/or maintenance during normal production operations under any of the following circumstances:
1. If a worker is required to remove or bypass a guard or other safety device; or
 2. If a worker is required to place any part of his or her body into an area on a machine or piece of equipment:
 - a. where work is actually performed upon the material being processed; or
 - b. where an associated danger zone exists during a machine operating cycle; or
 3. During the start-up, pressurization and/or energization of onsite utilities.
- P. **ELECTRICAL SAFETY**. Before work begins, Electrical Subcontractor shall determine by inquiry, direct observation and/or by instruments, whether any part of an energized power circuit, exposed or concealed, is so located that the performance of the work may bring a worker, tool, or machine into physical or electrical contact with any live electric power circuit and shall make its findings available to the Contractor Superintendent.

Electrical Subcontractor is responsible to assign one or more Qualified Person to identify all potential power sources in order to avoid conducting Energized Electrical Work (EEW). Electrical Subcontractor shall, with the use of voltage testing, verify a zero energy state before any electrical work begins. In the event de-energizing introduces additional hazards, increased risk or is not feasible due to equipment design, facility requirements or otherwise, the Electrical Subcontractor, in coordination with the Project Owner and Contractor must carefully plan the work before proceeding. The following documents must be completed, reviewed and signed prior to conducting any EEW:

1. EEW-Permit, Hazard Assessment
2. Hazard Assessment
3. Method of Procedure
4. Job Hazard Analysis
5. Pre-Task Plan
6. All EEW-Permits with the required signatures (Project Owner, Electrical Subcontractor and the Contractor Superintendent, and MEP Coordinator) *before* work begins.

All EEW 50 volts AC and above and 100 volts DC and above must strictly follow the guidelines of the National Fire Protection Association (NFPA) -70E, including Lock/Out Tag/Out procedures.

- Q. **TRENCHING AND EXCAVATION**. (Call before you dig): **USA North** = 811 or 1-800-227-2600 or call your local USA numbers.

Excavators in California are required to follow all California Government Code § 4216 requirements for Trenching and Excavation. Call USA to locate/mark public utilities. If private utilities are not located/marked by USA, the utilities must be located by the facility owner and the Excavator.

- Excavators in California are required to have a Cal-OSHA Site-Specific or Annual Permit and Cal-OSHA Notification before construction of trenches or excavations 5 feet or more in depth, and into which a person is required to descend. Copies shall be maintained at the project site.

- Trenching and Excavation is defined as High Hazard Work and requires a JHA to be completed by the Excavator. The subcontractor *must* submit the JHA to the Contractor Project Team for approval before proceeding. Please refer to the JHA process in item E. II of this document. Shutoff procedures and locations of utility shutoffs must be included in the JHA. At the crew level, Daily Pre-Task Plans shall be performed to ensure workers performing the work are aware of potential hazards identified in the JHA and to ensure workers performing the work may participate in designing safe work procedures.
- Subcontractors must follow Cal-OSHA requirements for Trenching and Excavation, which include, but are not limited to, surveying and marking, calling USA North, reviewing any plans, and visually verifying utilities.
- When excavating within 10 feet of subsurface installation, expose the utility by hand every 25 feet to make sure the utility is where it is indicated. When excavating in California and Nevada within 24 inches of any underground utilities, the law requires you to hand-expose and protect the utility (it does not mean expose or pothole – such practices are insufficient to meet California/Nevada requirements) prior to using power equipment.
- Dig with Care. In California and Nevada - excavate by hand within 24 inches of the outside diameter of any utility. Utilities that are in conflict with your excavation are to be located with hand tools and protected before power equipment is used. Notify Contractor and the affected utility operator(s) of any contact, scrape, dent, nick or damage to their utility.

- R. **WORKER SAFETY.** All Subcontractors and any lower tier subcontractors and their respective agents shall be dressed in appropriate clothing when entering jobsite, including long pants, work boots or other appropriate or required footwear, safety glasses, appropriate gloves, high visibility safety vests and hardhats. Sleeveless shirts and open-toed shoes will not be allowed. Subcontractors' agents include field personnel, management, vendors, and visitors.

Subcontractor agrees to provide Personal Protective Equipment (PPE) and adequate training for the use of PPE to all of their employees as required by applicable OSHA standards. Contractor is not responsible for providing PPE to anyone but Contractor's own personnel.

- S. **HAND INJURY PREVENTION.** Subcontractor agrees to adopt and enforce a hand injury prevention program that includes, but is not limited to, issuing appropriate gloves, PPE and training to reduce the possibility of hand injury. Gloves should be appropriate to any potential hazard(s) as determined by a Competent Person, and should meet EN388 level 3 or ANSI/ISEA level 2 cut resistance or greater. Glove usage shall be mandatory where pre-task planning determines there is a risk of hand injury or when required by OSHA, Contractor or the Project Owner. Glove usage is not required if equipment or tool manufacturer's instructions indicate use of gloves would create a hazard. Visitors and personnel performing clerical or administrative tasks are exempt from the above requirements.
- T. **FIRST AID.** Subcontractors must provide an adequate number of First Aid kits and immediate access to a medical facility for use in an emergency. An effective emergency communication system is the responsibility of the Subcontractors for their activities. Subcontractors will participate in any site-specific First Aid service established by Contractor for the effective treatment of First Aid cases.

See Item B for staffing requirements and expectations.

- U. **STORM WATER QUALITY CONTROL.** Subcontractors shall train their employees on Best Management Practices (BMP's) to prevent erosion and silt infiltration into storm drains.

Subcontractors shall abide by all storm water preventative measures implemented at any Contractor project site.

- V. **COMPETENT PERSON.** Subcontractors providing any activity such as, but not limited to the following: excavation and trenching, confined space, scaffold erection, asbestos, fall protection, bolting and riveting, slab construction operations, etc., shall provide a competent person, the requisite possessing and demonstrating knowledge, training, and abilities and duties to identify existing and predictable hazards and possess the authority to impose prompt corrective measures to mitigate the hazards.

A Competent Person shall be readily available and on-site during any of the referenced activities above.

- W. **AIR QUALITY.** Subcontractors shall comply with all EPA, OSHA, and local regulations to minimize airborne dust, dust clouds, fugitive solvent emissions, noxious odors, and toxic air contaminants for both indoor and outdoor activities during any/all construction related activities. Subcontractors shall demonstrate compliance with applicable OSHA/EPA Standards such as, but not limited to: welding fumes, asbestos, lead, silica, and mold.
- X. **MOLD.** Subcontractors shall take all reasonable and prudent steps to prevent mold growth on the project and will adhere to Contractor's Water and Mold Intrusion Procedures. Contractor's SE&H Department shall approve any variation to these procedures.
- Y. **HEAT STRESS PREVENTION.** Any Contractor/Subcontractor working on a Contractor project site shall comply with any Heat Stress procedures initiated by Contractor. If a project is located in California, any Contractor/Subcontractor working on a Contractor project site shall also comply with the Cal/OSHA Heat Stress Standard.
- Z. **FALL PROTECTION AND PREVENTION.** In addition to the standards set by Federal OSHA and state run OSHA programs, all Subcontractors shall enforce a 100% fall protection policy for all work done at 6 feet or above. The various fall protection exceptions allowed by OSHA programs for ironworkers, deckers, masons and other trades will not be allowed on Contractor projects.

Passive protection such as handrails, properly marked floor coverings, netting, fall restraint or other effective means shall be considered and implemented before the use of body harnesses are deployed for fall protection. Any Subcontractor using body harnesses as the primary means of fall protection shall have documented training records on site for all workers using such equipment conducted within the last year.

Fall protection plans that allow a Controlled Access Zone (CAZ) or a Controlled Decking Zone (CDZ) with a Safety Monitoring System where workers are allowed to enter and be exposed to fall hazards **without the use of a fall protection system are prohibited.**

A CAZ or CDZ that limits access or restricts workers from approaching a leading edge or a fall hazard **is allowed only if** a fall protection system is used.

- AA. **CRANES.** Contractor Safety personnel should be included in all pre-erection meetings, and during the actual crane set-up and life. The Erection Plan, which must include a Job Hazard Analysis (JHA), must be prepared by a Qualified Person as defined by OSHA, and must be reviewed by the Contractor project team and Safety Manager. The Contractor team will communicate final authorization to proceed.

All crane certification inspections shall be performed by a qualified outside 3rd party – not by the Subcontractor(s) or crane owner/supplier. Load testing documentation must have been conducted within the last 4 years and be available for review upon request. All crane-related operations are to receive final approval/authorization from the Contractor project team.

Critical Lifts (to be used only in very rare instances) are defined as tandem lifts, or lifts that exceed 75% of the crane capacity for a given lift on a load chart. Contact the Contractor project team and/or Safety Manager first if you are considering a critical lift.

If it is determined that a critical lift will take place on a jobsite, there should be a more detailed review than usual of all involved factors and parties. Review equipment needed and circumstances which make a critical lift necessary, and complete a Critical Lift Plan which is required by OSHA beyond 75% of crane capacity. IMPORTANT NOTE: Critical lifts should only be used as a last resort when all other means and methods are impossible, impractical, or create a greater hazard; and the decision to proceed must be pre-approved by the Contractor project team and Safety Manager.

BB. DRUG AND ALCOHOL POLICY. To help ensure a safe, healthy, and productive workplace, Contractor has adopted a policy of maintaining a workplace free of drugs, alcohol and controlled substances and associated paraphernalia. This policy restricts such items and substances from being brought onto, or being present on Contractor premises or projects ("Project"). Contractor also prohibits individuals from reporting to work or working under the influence of drugs, alcohol, and other controlled substances which may affect their ability to perform work properly and safely.

All Subcontractors performing work on a Contractor Project will be required to have a current Drug and Alcohol Policy and confirm that it meets or exceeds Contractor requirements. For purposes of this Drug and Alcohol Policy, "Subcontractor" is defined to include any lower tier subcontractors and vendors of such Subcontractor.

The Subcontractor Drug and Alcohol Policy must include:

1. A comprehensive description of pre-employment testing procedures including:
 - a. Verification, to the extent applicable consistent with federal, state and local laws that all personnel assigned to a Contractor Project have successfully completed this screening.
 - b. Acknowledgement that any Subcontractor personnel testing positive for drugs and/or alcohol will not be deployed on a Contractor Project and must wait a period of six months from the date of the positive test results before they would again be eligible to return to a Contractor Project.
 - c. Acknowledgement that in the event that Subcontractor personnel retests as positive after the six month waiting period they will not be deployed to a Contractor Project at any time in the future.
2. Comprehensive procedures for probable cause testing including:
 - a. Acknowledgement that Contractor reserves the right to have any Subcontractor personnel removed from a Contractor Project at any time in the event that impairment is suspected and the Subcontractor is notified by an authorized Contractor representative of the suspected impairment.
 - b. Verification by Subcontractor that any personnel removed from a Contractor Project for suspected impairment has satisfactorily passed a screening test before being readmitted to a Contractor Project.
 - c. Acknowledgement that Contractor is under no obligation to readmit any Subcontractor personnel removed from a Contractor Project because of suspected impairment, regardless of a subsequent satisfactorily passed screening test.
3. Comprehensive procedures for post-accident testing that confirm:
 - a. Testing will occur when reasonable suspicion exists that a Subcontractor employee whose behavior may have contributed either directly or indirectly to a work-related accident was under the influence of a substance.
 - b. Testing will occur in the event of a work-related accident involving property damage, bodily injury, a fatality, or work-related near misses that would likely have resulted in property damage or bodily injury.

- c. Testing is to be completed within a four (4) hour window.
 - d. Acknowledgement that all Subcontractor personnel associated with the incident must remain available for testing and may not take any action to interfere with testing or the results of testing.
4. Acknowledgement that any test sample found to be substituted, tampered with or adulterated in any way will be considered a positive test result.
 5. Acknowledgement that a negative dilute test result will be considered insufficient. The Subcontractor personnel shall be sent for a retest immediately after receiving the first negative dilute test result. Should the retest be confirmed as another negative dilute, Subcontractor shall interpret this retest result as a negative test result. Subcontractor will not allow personnel to return to a Contractor Project until the Subcontractor confirms the retest result to be satisfactorily passed.
 6. Acknowledgement that Subcontractor has procedures for effectively and safely managing Subcontractor personnel currently using legally prescribed medications.
 7. Acknowledgement that possessing, soliciting, manufacturing, distributing, dispensing, and/or the use of illegal drugs, drug paraphernalia, unauthorized controlled substances (including alcohol), illegal use of legal drugs, and other intoxicants on or in any Contractor Project or at any facility is prohibited, will result in removal of the offending individual from all Contractor Projects, and may also result in the removal of the Subcontractor from all Contractor Projects.
 8. Acknowledgement that Subcontractor is solely responsible to appropriately implement its Drug and Alcohol policy and its procedures, including but not limited to, procedures related to Subcontractor employees' safety, privacy and confidentiality.
 9. Acknowledgment that Subcontractor is responsible for arranging all testing, and any and all costs associated with tests required of anyone employed by Subcontractor pursuant to this policy.
 10. Acknowledgement that no individual search, drug test, or alcohol test of Subcontractor personnel will be conducted without the individual's consent and acknowledgement that refusal to give consent may be cause for Subcontractor personnel removal from a Contractor Project.
 11. Acknowledgement that failure of Subcontractor to report any violations of federal law H.R. 5210, "The Drug Free Workplace Act of 1988" may result in removal from all Contractor Projects.
 12. Verification that the Subcontractor Drug and Alcohol Policy meets or exceeds the following urine and breath alcohol testing panel cut off levels:

Drugs	Initial Test Emit	Confirmation Test GCMS
Amphetamines	300ng/MI	250/MI
Barbiturates	300"	100"
Benzodiazepines	300"	100"
Cocaine	150"	100"
Heroin	10"	10"
MDA-Analogues	250"	200"
Methadone	300"	100"
Opiates	2000"	2000"

Marijuana (THC)	20"	10"
PCP	25"	25"
Methaqualone	300"	200"
Propoxyphene	300"	200"
Alcohol	.04% BAC	.04% BAC

Subcontractor will accommodate additional testing/screening requirements specified by Contractor /Owner contracts, including Owner-mandated random testing or alternative testing panels.

Subcontractor further understands and agrees that Contractor reserves the right to request evidence that individuals performing work for Subcontractor have undergone and passed screening tests under other circumstances not specifically set forth above.

CC. **CODE OF CONDUCT.** Contractor's Code of Conduct defines standards for fair, safe, and healthy workplaces throughout our supply chain. Contractor is committed to meeting fundamental responsibilities in the areas of ethics, human rights, labor, safety, environment, and community, and it holds its business partners to the same set of principles. The complete Contractor's Code of Conduct can be found here: http://swinerton.com/Subcontractors_Docs/Contractors-Code-of-Conduct.pdf.

DD. **POTENTIAL CHANGES.** Contractor reserves the right to change or modify the requirements for the standards currently set-forth in this Attachment. Such changes, modifications, additions, or deletions to the terms and conditions of use shall be effective immediately upon written notice, and Subcontractor shall comply with all such modified standards.

SAMPLE CHECKLIST

Subcontractor Safety, Health and Environmental Requirements MINIMUM PERFORMANCE STANDARD CHECKLIST

This checklist is provided to assist in the planning and implementation of the “Subcontractor Safety, Health and Environmental Minimum Performance Standard” (MPS).

Prior to the start of a Subcontractor’s on-site field mobilization, this checklist should be completed and submitted to Contractor along with all supporting compliance information. Failure to submit the required checklist and accompanying data may result in the withholding of progress payments due to the Subcontractor.

This checklist addresses the need for action plans to conform and respond to the MPS. Specifically, it requires a Subcontractor to commit to the resources and timing for actions (who, where, when and how) necessary to effectively implement the MPS program.

The MPS checklist will be used as a joint tool for the Subcontractor and Contractor to monitor and manage the Subcontractor’s MPS implementation with specific assignments for program completion and maintenance. It is also intended to provide clear assignment of accountability within the Subcontractor’s team for the timing and individual responsibility for the MPS program.

Subcontractor management and craft personnel assigned to this project should be provided a copy of the Subcontractor’s general safety program and project specific MPS program including this completed checklist.

Please respond to all checklist questions/inquiries. Submit a signed copy to Contractor for review and recordkeeping.

A. General Expectations

- Submit a copy of the Subcontractor's general safety program.

B. Unique Safety, Environmental, and Health Risk Survey of Subcontractor's Work

- List risks below, or provide a listing on a separate attachment.

1. _____
2. _____
3. _____
4. _____
5. _____

C. The MPS compliance shall be expected of any additional tier Subcontractors under the first tier Subcontractor's control.

1. Provide a list of additional sub tier suppliers or vendors utilized by the Subcontractor with on-site fieldwork.
2. Designate personnel assigned the responsibility for monitoring of the listed company's MPS program compliance.

Name: _____ Title: _____

D. Complete a Pre-Task Plan to identify hazards related to work.

Specify who will be responsible for "Pre-Task" planning and available for Pre-Task Plan reviews as needed.

1. Subcontractor will use Contractor's Pre-Task Planning procedures. Indicate Subcontractor's contact person below.
2. Subcontractor will provide their own Pre-Task Planning procedures. Indicate Subcontractor's contact person below.

Name: _____ Title: _____

E. Full-time Safety Professional is required when Subcontractor staffing levels reach 30 employees at the project site.

1. Are Subcontractor manpower levels anticipated to reach 30 employees?

Yes No

If yes, please provide the name and resume of qualifications for the Subcontractor's Safety Professional assigned to the project.

F. The Subcontractor shall assign a Designated Safety Person (DSP).

- Provide the name of the Subcontractor's DSP.

Name: _____ Title: _____

G. Subcontractor shall provide an adequate number of First Aid-trained people.

1. List the names of the on-site personnel with First Aid training:

2. Subcontractors must supply properly equipped First Aid kits. List location of kits (if more than 2 kits please provide a separate list of locations):

First Location: _____
Second Location: _____

H. Subcontractor will maintain staff and equipment on site capable of responding to any emergencies related to their work.

- Designate the individual responsible to monitor and maintain emergency staffing and equipment:

Name: _____ Title: _____

I. Subcontractors shall require their employees to attend a site-specific safety orientation meeting.

1. Provide an outline agenda for meeting.
 2. Designate individual responsible for conducting meeting.

Name: _____ Title: _____

J. Weekly Toolbox Safety Meetings.

1. Designate the time and day of weekly toolbox safety meeting.

Day: _____ Time: _____

2. Designate the individual responsible for conducting and documenting these meetings.

Name: _____ Title: _____

K. Subcontractors shall be represented at any scheduled coordination meetings where safety is discussed.

- Designate individual(s) assigned to attend safety meeting.

Name: _____ Title: _____

L. Contractor should be made aware of any special training required as a result of Subcontractor activities.

- Submit list special training requirements along with a listing of individuals already trained, and/or a schedule to provide training.

M. An incident/accident investigation shall be conducted for any injuries or equipment/property damage events. Copies shall be provided to Contractor .

- Designate individual responsible to conduct incident/accident investigations and provide copies to Contractor.

Name: _____ Title: _____

N. In the event of media involvement, Subcontractors will cooperate with Contractor's Crisis Management efforts.

- Designate the individual that will interface with Contractor in the event of media involvement in incident/accident issues. Provide emergency contact numbers.

Name: _____ Title: _____
Office Phone: _____ Pager: _____
Cell Phone: _____ Home Phone: _____

O. Subcontractors should have post-incident drug testing procedures.

- Provide Contractor with confirmation and acknowledgement of post-incident drug testing procedures with a copy of written statement or procedure (reference page and paragraph if contained within attached program).

Section: _____ Page: _____ Paragraphs: _____

P. Subcontractors shall conduct daily safety audits of their work areas.

1. Designate individual responsible for conducting daily safety audits.

Name: _____ Title: _____

2. Provide a copy of a sample audit checklist.

Q. A plan of disciplinary action for violation of known safety requirements shall be part of Subcontractor injury and illness prevention programs.

- Provide a copy of written policy or excerpt of policy addressing disciplinary actions for safety violations (reference page and paragraphs if it is contained within attached program).

Section: _____ Page: _____ Paragraphs: _____

R. Subcontractors are responsible for daily clean-up.

- Designate individual responsible to insure that clean-up is completed daily.

Name: _____ Title: _____

S. The Subcontractor agrees not to bring hazardous materials on site or generate hazardous waste without the knowledge and consent of Contractor .

Provide a list of all hazardous materials that will be brought on site.

T. The Subcontractor agrees to provide Personal Protective Equipment (PPE) and adequate training for the use of PPE to all of their employees as required by applicable OSHA standards.

1. Provide a listing of all Personnel Protective Equipment required for the Subcontractor's employees.

2. Confirm that training has been provided to employees on the use of equipment, and/or a schedule to provide training.

Company: _____

Name: _____

Title: _____

Office Address: _____

Telephone: _____

Signature: _____

(Subcontractor on-site Supervisor)

MASTER SUBCONTRACT AGREEMENT
STANDARD PROJECT PROCEDURES & QUALITY

[Date]

SECTION 1 - PURPOSE & USE OF MANUAL

This manual supplements and expands upon the Subcontract Documents, which should be reviewed in conjunction with this manual. Items in this manual are not intended to supersede more stringent requirements contained elsewhere in the Subcontract Documents. Any conflicts between this manual and other Subcontract Documents should immediately be brought to the attention of Contractor for clarification.

SECTION 2 – RFIS, SUBMITTALS, SHOP DRAWINGS, SAMPLES

A. General Procedures

Subcontractor shall submit all submittals and RFIs through Autodesk Construction Cloud (ACC).

B. RFIs

All RFIs are to be detailed to such extent that the RFI can be submitted to the Owner or Architect without additional edits and/or clarifications. A detailed RFI explains more than the current condition or problem; it illustrates the issue using Contract Documents and/or photos, explains why a change or clarification is needed, and provides potential cost effective solutions.

C. Submittals

Subcontractor is responsible to ensure its submittals comply with the Contract Documents and is responsible for any delays caused by lack of such compliance.

Submittal Log: Within one (1) week after notification of award of contract, Subcontractor shall provide a complete list of all items it is required to submit, including closeout documentation. Subcontractor shall ensure the submittal submission dates allow for timely review, procurement and delivery of construction materials in accordance with the Project Schedule and any other dates specified in the Subcontract Documents.

Subcontractor shall also provide a corresponding Procurement Log detailing dates and durations for Submittal Procurement, Submittal Review, Material Procurement, Fabrication, Freight, Customs, and Delivery to Site. Final format and timing of logs will be decided at work order execution. Cost incurred for delays caused by Subcontractor's failure to submit as scheduled or having to resubmit, are Subcontractor's responsibility.

D. Shop Drawings

Index: All sets of drawings must have an index on the front sheet listing each drawing by sheet number, title, original drawing date, revision number and revision date.

Key Plans: Key plans and other references are to be provided showing the locations (in relation to the entire building) of all items shown on the shop drawings. Shop drawing detail numbers are to be shown on the key plans.

Internal Shop Drawing References: Shop drawing details must refer to additional sections, elevations, blowups and details within the shop drawings by sheet and detail numbers. Details must refer back to the sheet from where they are taken.

Coordination: Copies of shop drawings shall be furnished by Subcontractor as required for distribution to other trades. Subcontractor shall coordinate the requirements of its Work with that of other trades prior to the preparation of shop drawings.

Each shop drawing detail and submittal item shall be cross-referenced to the applicable contract detail(s), specification section(s) and sub-section. Use separate submittals to identify items in scope from differing specification sections.

Submittals will not be “approved” by the Architect/Engineer or Contractor; they will be reviewed for general compliance with the Contract Documents and stamped according to the provisions of applicable specification sections. Such submittals, once reviewed, shall not supersede or take precedence over the Contract Documents.

Review by the Architect/Engineer and/or Contractor shall not relieve Subcontractor from responsibility for any errors or omissions of any sort, or from necessity of furnishing Work required by the Contract Documents which may not have been shown on the submittal.

It is Subcontractor’s responsibility to obtain specific approval for deviations from the Contract Documents by “clouding” details on the shop drawings and submittals, clearly noting them as deviations from the Contract Documents, and receiving written verification that the change(s) are accepted by the Architect.

Any deviation from the Contract Documents noted on Subcontractor’s submittals or shop drawings will be assumed for Subcontractor’s convenience. Any costs incurred by Contractor or any other subcontractor as a result of changes to the Contract Documents will be Subcontractor’s responsibility.

Subcontractor shall furnish the necessary product or equipment specifications, tests, and other satisfactory evidence as to the quality of a material or piece of equipment or the installation of the same.

Non-conforming details required for reasons beyond Subcontractor’s control (Contract Document details which are incorrect, proven to be faulty or not feasible, etc.) and that will result in an increase in the Subcontract Sum, shall be brought to Contractor attention in writing immediately (prior to fabrication and/or installation). Failure to follow this procedure will jeopardize Subcontractor’s ability to recover additional incurred costs, if any.

Revisions: All revisions must be “clouded”, properly indexed and dated. Previously submitted drawings are not to be revised without clouding all changes on each sheet. Subcontractor shall specify the origin of any revision. Resubmittals must specifically address each marked-up reviewer comment by repeating the comment, describing where the comment was made and explaining how it has been or will be addressed. Cloud, number, and date revisions on resubmitted drawings.

Subcontractor is responsible for the Contractor’s, Architect’s, and Consultant’s follow-up correspondence, handling and review costs associated with improper submittals, substitution requests, and unnecessary resubmittals.

E. Samples:

Samples are to be submitted in sets of six (6). Subcontractor will receive one set in return for its files. Samples must be large enough to meet the specification requirements or minimum size to affix the described label below plus two (2) 2” x 3” labels for the Architect’s and Contractor’s review stamps.

Each sample submitted is to have an attached description tag or label with the following information:

Project:	[PROJECT NAME & LOCATION]
General Contractor:	Contractor
Subcontractor:	_____
Specification Section:	_____

Item Description: _____
Date: _____
Finish Schedule Designation: _____

SECTION 3 - COORDINATION OF WORK

A. General Procedures

Subcontractor is responsible to field measure and coordinate its Work with that of other trades for proper fit and function. Subcontractor is expected to review and/or request shop drawings, cut sheets or other data on installation or equipment of other trades that may affect their work so that Subcontractor may properly coordinate its work with others. Failure to do so will prevent Contractor from giving Subcontractor assistance, and Subcontractor will be responsible for any additional costs due to lack of coordination.

Copies of all shop drawings and submittals are available for review in Contractor's jobsite office. Copies can be obtained from the relevant subcontractor. Subcontractor is to include costs for providing coordination copies of submittal data to other subcontractors as needed.

B. Coordination Drawings

In regards to coordinating space requirements, Subcontractor's shop drawings are to include all pipe elevations relative to top of floor slab below as well as from bottom of deck above. A legend noting dimensions from centerline of piping to outside of piping and to outside of coupling, support, or insulation, whichever is lower, is required. Meetings for the purpose of coordinating space requirements among subcontractors will be conducted by Contractor as necessary.

Where conflicts arise, Contractor will decide which subcontractor's work will have priority. Late submittal of shop drawings may affect Subcontractor's position in this regard. Minor relocations to eliminate spatial conflicts will be provided at no additional cost. If Subcontractor does not install its Work per coordinated drawings, Subcontractor will be responsible for reinstalling at the correct location and elevation at no additional cost to Contractor or Owner. If field conditions do not allow for Subcontractor to install per coordinated plans, Subcontractor is to notify Contractor immediately before proceeding with their Work.

C. Sleeves, block-outs, embeds

Subcontractor is required to submit a complete, detailed listing (or drawings if requested) of all locations where Subcontractor is considering installing inserts, sleeves, block-outs, cut-outs, or embedded items on the Project. These drawings will likely need to be in CAD form. Subcontractor is to layout and install all of its own inserts, sleeves, block-outs, and embedded items. Subcontractor must fill extra sleeves installed but not used.

D. Layout

Subcontractor is responsible for its own layout, including items listed in this section's Paragraph B and layout of housekeeping pads required for Subcontractor's equipment. Subcontractor is responsible for additional concrete drilling and doweling or other costs resulting from missing layout deadlines established by the Project Schedule or Project Superintendent.

E. Ceiling Heights

Ceiling heights are critical and must be maintained. Subcontractor shall layout and is responsible for installation of the Work in such manner that the ceiling elevation relative to the surveyor's elevation benchmarks on each floor and the

distance from the floor to ceiling called for in the architectural drawings, will be maintained. Subcontractor shall maintain adequate clearance above ceiling to allow installation of the ceiling, ceiling framing, light fixtures and other ceiling mounted elements. If ceiling heights provided in the Contract Documents cannot be achieved due to conflicts or congestion, Subcontractor is to coordinate with Contractor and other subcontractors to provide solutions which will have the least impact on the ceiling heights, cost, and schedule.

F. Access Panels

Subcontractor is responsible for furnishing access panels as required for Subcontractor's Work for installation by others. Access panels in architectural sheetrock areas, such as ceilings and soffits, must be of the highest quality, made to receive sheetrock as flush mounted and tapeable.

Subcontractor shall locate and dimension all access panels on Subcontractor's shop drawings including those required by the Contract Documents, applicable codes or for the reasonable operation and maintenance of the system/Project. Subcontractor shall coordinate access panel locations including field identification and verification with other trade subcontractors who must frame or block out their work to receive access panels (i.e. drywall, CMU, concrete formwork, etc.).

Subcontractor shall identify the location of removable ceiling panels that will be used to access its Work by hanging a ribbon from the Work. The ceiling Subcontractor must provide and install color-coded dots in the tile or other prescribed method of identification at these locations.

G. Penetrations

Sleeves for penetrations through beams, columns, walls, foundations and slabs shall be furnished and installed by Subcontractor so as not to delay or impede the work of others. Subcontractor is responsible for adequately securing such sleeves and verifying correct location immediately prior to, during and after concrete placement. Locations shall be coordinated by Contractor and approved by the Structural Engineer. Subcontractor shall provide files necessary for Contractor to combine all subcontractors' penetrations on one set of plans.

Openings requiring concrete formwork, metal deck cutting or edging will be provided by and, if shown on the architectural or structural drawings, paid for by others. Subcontractor shall identify the locations, quantities and sizes of all such openings.

Any additional penetrations through or modifications to structural steel members beyond what is shown on the structural drawings will be provided by others, subject to the approval of the Structural Engineer and paid for by Subcontractor. Subcontractor must identify the locations, quantities and sizes of such penetrations on its shop drawings. Penetrations and modifications required in the field for Subcontractor's convenience or due to coordination issues with other trades to be provided by others will be paid for by Subcontractor.

Subcontractor shall provide field layout of all penetrations required through walls by the scheduled start date for wall framing in the related area if the penetrating sleeve, duct, pipe, etc. is not already installed.

Subcontractor shall provide any concrete coring required for its work. Locations and method are to be submitted for approval to Contractor and the Structural Engineer.

All penetrations through building elements must be located and dimensioned on Subcontractor's shop drawings prepared specifically for that purpose by Subcontractor. These drawings must be submitted to Contractor as required by the progress of the Work.

Subcontractor is responsible for patching any penetrations made for its Work. Such patching shall return the penetrated item to its original structural, fire resistant, sound attenuation and air pressurization capacity. Penetration patching method and locations must be approved in advanced by Contractor.

Subcontractor shall grout, pack or otherwise suitably prepare its penetrations to receive scheduled waterproofing or roofing. Subcontractor shall also provide any counter flashing, roof jacks, stainless steel draw bands, sleeves, etc., which are required for its roof penetrations, supports, etc., unless specifically shown on the architectural drawings.

Subcontractor is responsible for waterproofing its penetrations if penetrations are made after scheduled waterproofing or roofing has been applied or if penetrations are made into work not scheduled to receive waterproofing but now requiring it due to Subcontractor's penetrations. Subcontractor shall provide any link seals required.

Subcontractor shall identify any penetrations or openings required by change order proposals affecting its work or else Subcontractor shall be fully responsible for all reasonable costs plus mark-up to provide them.

In the event Subcontractor did not timely install or incorrectly installed penetrations and blockouts, costs to remedy, including costs for chipping, and/or coring, post applied methods, carbon fiber, and x-ray is the responsibility of Subcontractor.

H. Caulking & Sealant

Subcontractor is responsible for all acoustical, architectural, fire and smoke, and weatherproof caulking and sealant within and adjacent to its Work as applicable unless otherwise noted. Subcontractor shall take care so as not to leave unacceptable surface for other trades.

I. Fireproofing / Installation

All items that are attached to the structural steel and/or metal deck must be in place before the fireproofing and/or insulation is applied. If fireproofing and/or insulation is existing, Subcontractor is to remove only that amount of material as required to properly attach its Work to the building's structure. All clean up associated with removal and replacement of fireproofing and/or insulation is to be by Subcontractor. Replacement of fireproofing or insulation materials removed or damaged will be the responsibility of the Subcontractor.

J. Supports

Subcontractor is responsible for furnishing and installing all inserts, hangers, threaded rod, wires and braces (including seismic) for its Work. Where these items are not finish product, Subcontractor must spray paint with a distinguishing mark or color such that each subcontractor can differentiate between its Work and the work of others.

K. Backing & Blocking

Subcontractor shall provide all backing, blocking and/or concealed framing required for its Work and shall install same in a timely manner so as not to delay the work of other trades.

L. Cutting & Patching

Subcontractor shall perform all cutting and patching under jurisdiction of their trade. Additionally, if cutting and patching are required due to the Subcontractor's failure in the performance of the Work, the Subcontractor will be responsible for the additional cutting and patching at their expense.

M. Drilling & Tapping

Subcontractor shall perform all drilling and tapping necessary for the installation of its Work and perform all drilling and tapping of its Work required to accommodate the work of other trades.

SECTION 4 - MATERIAL PROCUREMENT, EXPEDITING & HANDLING

A. Critical Items

Every effort must be made to expedite shop drawing submittals and subsequent acquisition of materials which are "critical" to the timely completion of the Project. All materials or equipment with a lead time greater than four weeks shall be identified to Contractor. Subcontractor shall ensure submittals are processed within enough time to maintain schedule.

B. Expediting

Subcontractor's Submittal Log will be referred to in determining items requiring special attention. The log shall be updated as required and submitted to Contractor. Subcontractor will be expected to closely coordinate delivery with its suppliers and advise Contractor of potential delays due to late delivery and long lead times. Subcontractor shall provide copies of purchase orders (with price deleted if desired) and delivery confirmation documents as requested by Contractor.

C. Deleted Material

If materials have been purchased by Subcontractor as part of its Work, and materials are deleted by an Architect or Owner initiated change prior to installation, one of the following options will be used:

1. Credit will be given to the Owner for the cost of the material minus any reasonable restocking charge.
2. If the material cannot be returned to the manufacturer or supplier for a reasonable credit, the material is to be turned over to the Owner at the time the building itself is being turned over and accepted by the Owner. Treat the material as follows:
 - a. Subcontractor is to inventory and store the material (offsite if required) and is responsible for the care and custody of the material until it is turned over to the Owner. Information on the inventory list shall include quantities and descriptions of all items and denote the Contractor Potential Change Item ("PCI") Number for the change. All costs associated with handling, storage, and turnover of the material are to be included in Subcontractor's change proposal at the time the material is deleted.
 - b. Subcontractor shall arrange, through Contractor, for the Architect or the Owner's authorized representative to sign the inventory sheet verifying the quantity and Owner's acceptance of the material. A Contractor representative is to be present when the material is turned over. A copy of the signed acceptance sheet is to be given to Contractor. Contractor will not sign for, nor accept responsibility for, the care and custody of material that is to be turned over to the Owner.

If there are any disagreements regarding the turnover of material to the Owner, Subcontractor will be required to produce copies of the signed acceptance sheet(s). If Subcontractor does not have signed copies of the acceptance sheet(s), they will be required to furnish the material in question.

3. Owner, at its option, may elect to have the deleted material disposed of in lieu of having it turned over. Written instructions, issued through Contractor, will be given to Subcontractor if this option is to be used. Subcontractor

will be liable for replacement cost for any deleted material that is disposed of without proper written instructions.

D. “Loose” Material

“Loose” material is defined as material that is required by the Contract Documents to be turned over to the Owner, but is not installed or attached to the building. (Examples: spare parts, attic stock, special tools, chemicals, etc.). Loose material is to be turned over at time of Project completion, unless specifically requested otherwise. Loose material is to be inventoried and turned over to the Owner in the same manner as Deleted Material (see above).

SECTION 5 - PROTECTION OF MATERIALS & INSTALLED WORK

A. General Procedures

Subcontractor shall protect and secure its materials, tools and equipment against loss by theft, vandalism or damage. Contractor will not accept any claim for alleged theft, vandalism or damage.

Subcontractor is responsible for furnishing, installing and maintaining protection measures for its installed Work until it is accepted by the Owner. Contractor will not accept responsibility for the care, custody and control of material between the time of installation by Subcontractor and acceptance by the Owner.

Subcontractor is responsible to prevent accidental activation of existing smoke detectors and sprinkler heads.

B. Repair or Replacement of Installed Work

Subcontractor shall touch-up, repair, replace, repaint, rehabilitate, etc., at no additional cost as required to bring their work to an acceptable condition (per specifications and/or industry standards) at the time the Work is to be turned over and accepted by the Owner.

C. Damage to Work

Damage to work will not be tolerated. Any person found damaging any work, existing or new, or any materials or equipment shall be promptly removed from the Project. The subcontractor employing such person will incur the cost of repair or replacement.

D. Damage by Another Subcontractor

If Subcontractor’s Work is damaged by another subcontractor, the subcontractor who caused the damage will be responsible for any repair and/or replacement costs. The Work is not to be delayed by disputes regarding responsibility for cost for damaged work. If there is a dispute regarding cost responsibility, the repair and/or replacement shall be tracked in accordance with the procedures for disputed Work. The burden of proof will be on the Subcontractor whose work was damaged.

SECTION 6 - FIELD OPERATIONS

A. Job Meetings

Subcontractor Meetings will be held at the jobsite office on a weekly basis or as required by Contractor’s Project Superintendent. Failure by the Subcontractor’s Field Supervisor to attend all meetings that occur starting two weeks before and during the time that Subcontractor is performing Work on site, may be cause for withholding that month’s progress payment until remedied. This requirement can be waived in writing by the Contractor’s Project

Superintendent. Subcontractor's office representatives are invited to attend job meetings and may, upon Contractor's directive, be required to attend.

B. Daily Reports

Subcontractor shall turn in a "Subcontractor Daily Report" by 9:00 a.m. each day on forms provided by Contractor. Information to be provided includes number of men, location, and a brief description of the Work performed the previous day. The form is to be dated and signed by Subcontractor's Field Supervisor. Processing of monthly progress payment may be jeopardized if the Subcontractor Daily Report is not submitted timely.

C. Subcontractor's Field Supervision

Subcontractor shall have a supervisor on site at any time Work is performed who has the authority to control all aspects of Subcontractor's Work and shall have the authority to receive and act upon directions given to the Subcontractor by Contractor. This person will be on site at any time Work is performed, from the first day of mobilization until the last punchlist or Work item is signed off. Subcontractor's Field Supervisor will have the authority to control all aspects of Subcontractor's Work, including crew size, scheduling, punchlist, etc. Subcontractor's Field Supervisor will also focus on adherence to the schedule, trouble shooting, quality assurance, and coordination with Contractor and other trades.

Subcontractor shall provide its field personnel with adequate drawings, specifications and instructions as required to undertake and complete the Work in an efficient and timely manner. If Subcontractor's personnel arrive at the jobsite without adequate information and instructions, Subcontractor will be responsible for any delays incurred per the Subcontract Documents. Subcontractor is fully responsible for the acts or failure to act, and omissions of the Subcontractor's own employees, sub-subcontractors, and vendors.

D. Directives

Subcontractors shall not consult directly with the Owner, Architect or Consultants without specific permission from Contractor. Contractor will have no obligation to honor verbal instructions given to a Subcontractor by the Owner, Architect or Consultants.

E. Material Storage & Field Office

All deliveries of materials to the jobsite are to be cleared with Contractor Project Superintendent with respect to date, time of unloading and storage area location at least two (2) days prior to delivery. Subcontractor is responsible for receipt and unloading of all materials delivered. Subcontractor is responsible for all costs if Contractor has to unload materials, or Contractor may reject a delivery for which Subcontractor has not made unloading provisions. Any delays and/or costs due to Subcontractor's lack of preparedness are the Subcontractor's responsibility.

If space permits, Contractor will cooperate with Subcontractors in assigning areas for material storage and field offices. However, it is understood that during the course of construction, it may become necessary to relocate storage areas and/or field offices if conditions warrant, in which case Subcontractor shall, at no additional cost, remove materials, clean all debris and vacate the area promptly.

All materials stored on building slabs are to be palletized if possible, to simplify any relocating that Subcontractor may need to do. Pallets must be spray painted with identifying marks or colors so that each Subcontractor can distinguish their pallets from the pallets of others. Contractor will remove unmarked pallets and all related costs equally divided among the subcontractors that have not marked their pallets.

F. Drinking Water

Subcontractor is responsible for providing drinking water for their personnel.

G. Radios

No personal radios or headphones will be allowed on site.

H. Food Trash

Food is not allowed in areas where “finishes” have begun. Food trash must be properly disposed of regardless of location on the jobsite.

I. Graffiti

Graffiti will not be tolerated. Contractor will charge Subcontractor any costs of graffiti removal.

J. Contractor’s Field Office

Contractor’s field office, storage container, and the equipment and supplies contained therein are for the sole use of Contractor’s employees.

K. Behavior

Subcontractor’s field personnel will be expected to treat all other field workers, management and visitors with respect and courtesy. Individuals exhibiting behavior less than what is expected from a working professional will be asked to leave immediately.

L. Temporary Facilities

Portable toilets will be provided for Subcontractor’s use. Permanent toilets constructed in the building may not be used by anyone.

M. Interior Work

No smoking, eating, chewing tobacco, spitting, etc. will be allowed once interior work commences and/or a building is enclosed.

SECTION 7 - CHANGES IN WORK

A. Notification of Change in Scope

From time to time Subcontractor may be requested to submit a proposal for revisions to the scope of its Work. Requests for Quotation will typically be used to notify Subcontractor of such changes and to request Subcontractor’s response.

If Subcontractor does not submit a response in the time requested, it will be understood that the change in question has no impact on Subcontractor's compensation or the time required for the performance of its Work. Further, if Subcontractor does not submit a response in the time requested, Contractor may, at its option, estimate Subcontractor’s work on Subcontractor’s behalf and issue a Change Order (either additive or deductive) to the Subcontractor.

Subcontractor shall make no changes in the Work nor shall Subcontractor be entitled to any additional compensation unless first authorized in writing by Contractor. Subcontractor Change Orders will be issued upon receipt of Change Orders from the Owner.

B. Potential Change Item ("PCI") Numbers

Contractor will assign PCI Numbers to issues that have the potential to change the Subcontract scope, price, or duration. PCI numbers will be assigned regardless of the source of the issue. All correspondence, quotations or other documentation generated in relation to a PCI issue must be identified with the correct PCI Number to ensure proper disposition.

C. Change Order Request

A Subcontractor Change Order Request must include the following:

1. Contractor PCI Number.
2. Detailed breakdown listing of materials, labor and mark-up cost.
3. Schedule impact (understood to be none if not addressed).
4. Back-up from all sub-subcontractors, material and equipment suppliers.
5. All impacts related to the PCI Number documentation quoted.
6. Time and Material documentation where applicable.
7. Maintenance of record documents
8. Compliance with Owner change order pricing requirements and restrictions.
9. Verification of Take-Off in Plan or Elevation
10. Modification Rate
11. Narrative of Change

D. Time & Material Work (T&M)

If Subcontractor is instructed to perform work on a "Time and Material" (T&M) basis, including overtime, the cost of the work is to be documented as follows:

1. T&M slips are to be signed on the day the work is performed by Contractor's Project Superintendent. One copy of the signed slip is to be given to the Contractor's Project Superintendent. Daily slips shall include the following information:
 - a. Contractor PCI Number.
 - b. Date work was performed.
 - c. Subcontractor Company Name.
 - d. Complete description of the work including type, location, extent, quantities, etc.
 - e. Number of men involved, broken down by trade, classification (e.g., apprentice, journeyman, and foreman) and the number of hours worked by each.
 - f. Detailed list of material used.
 - g. Equipment used.
 - h. Description of work left to complete and, if applicable, notification of work completion.
 2. Daily T&M slips that do not have the proper Contractor PCI Number, Project Superintendent's signature and other required information will be considered VOID.
 3. Quotations for time and material work are to be submitted within five (5) working days of the completion of the work. Copies of the signed daily slips are to be submitted as backup. Change Orders will not be processed unless signed time and material slips are submitted daily.
 4. Subcontractor must notify Contractor's Project Superintendent prior to starting or resuming T&M work. Failure to do so may result in a dispute over time and material amounts.
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E. Disputed Work

If Subcontractor is instructed to perform work which Subcontractor believes is not within its scope, Subcontractor shall notify Contractor in writing within three (3) days and state the reasons for the dispute. In the meantime, the disputed work is NOT to be delayed. A Contractor PCI Number will be assigned to track the work, and the cost responsibility will be determined by the Project Managers for Contractor and Subcontractor.

The procedure used to document and track Disputed Work is the same as the process used for "Time and Material" work described above. The signature of Contractor Project Superintendent on time and material daily slips is only to verify that the work was performed and is NOT an acceptance of responsibility for the cost of the work, nor an affirmation that the work is to be considered as "extra".

If the disputed work is later acknowledged by Contractor as a valid change, signed daily time and material slips will be used to determine the change amount. Failure by the Subcontractor to provide signed T&M slips will constitute a waiver of Subcontractor's right to additional compensation for the disputed work, regardless of language on Subcontractor's ticket.

F. Billing of Changes

All Subcontractor billings for base contract work and all change order work will be paid as progress payments only. There will be no payments for change order work of any type without a signed Contractor Subcontract Change Order.

SECTION 8 - RECORD DOCUMENTS & PROJECT CLOSE-OUT

A. Maintenance of Records Documents at Jobsite

A complete set of electronic or hard copy drawings and specifications will be set aside as "RECORD" documents and maintained in Contractor job site office. This set of documents will be used for no other purpose. Drawings and specifications are to be corrected and updated weekly in a neat, legible manner by Subcontractor's authorized representative.

1. Each entry on the documents is to be initialed and dated by Subcontractor's authorized representative.
2. All changes from the original drawings and specifications are to be shown.

Subcontractor is responsible to get the most updated contract documents such as updated drawings sets, ASIs, ESIs, RFIs, and approved submittals to its field personnel in a timely manner.

B. As-Built Drawings

Subcontractor is responsible to procure and pay for all documents required to maintain and turnover, at Project completion, all as-built documents. As a minimum, Subcontractor shall provide one electronic and three hard copies of all as-built drawings. These drawings shall indicate exact installed locations of concealed work, including conduit, piping, ducts, mechanical and electrical equipment, etc. Depths, sizes and dimension plan locations are to be indicated for all piping below grade or under floor slabs. All changes to architectural and structural work are to be similarly shown.

C. Record Specifications

Specification sections are to be clearly marked to indicate products incorporated into the work. Where alternates or more than one supplier are specified, it is to be indicated which product was used. If a substitution to the specific item is approved by the Architect, it is to be noted as such. If required, Subcontractor is to supply narrative descriptions of changes.

D. Changes Shown on Shop Drawings

Changes to the Contract Documents which are shown on Subcontractor's shop drawings are to be incorporated into the as-built documents with the shop drawing detail and drawing number noted.

E. Approval of Progress Payment Requests

If requested by the Owner or by Contractor, Subcontractor must show evidence of up-to-date as-built documents as part of the monthly progress payment process. All corrections or changes that have occurred in the Work prior to the date of the payment request are to be shown before the payment request will be approved. Failure to show such evidence will be cause for rejection of Subcontractor's application for payment, or payment may be delayed until as-built documents are brought up to date. Approval of Subcontractor's payment request shall not relieve Subcontractor of any responsibility for record documents.

G. Completion

Upon completion of the Work, and before final payment is made, Subcontractor shall certify in writing that all changes have been noted and the final record documents are complete and accurate with respect to the Work.

H. Close Out Documents

Close out documentation is due no later than thirty (30) days prior to scheduled completion date or as otherwise specified in the Contract Documents. Failure to submit all close out documentation by this date may result in a back charge to Subcontractor for delay.

Close Out documentation includes:

1. As-Built Drawings and Specifications.
2. Operating & Maintenance Manuals (as specified).
3. Maintenance and Cleaning Instructions (required for all architectural items).
4. Guaranty/Warranty Forms.
5. Balancing Reports (due within ten (10) days of substantial completion).
6. Service and Maintenance Contracts (as specified).
7. Tool, Keys, Key Cabinets, and Testing Equipment.
8. Transmittal of Attic Stock and "Loose" Materials.

SECTION 9 - QUALITY CONTROL

Subcontractor shall provide a designated Quality Management representative with the authority to act on quality matters on behalf of Subcontractor. Subcontractor shall maintain a copy of the most recent set of approved submittals and Contract Documents on-site, for use by Subcontractor.

Subcontractor shall participate in Pre-Installation Meetings to plan the Work before commencing construction for each definable feature of Subcontractor's Work or as required for coordination with other trades. Subcontractor shall provide verification that materials delivered to the Project site conform to the approved submittals and the Contract Documents.

Subcontractor shall provide a written Project specific Quality Control plan prior to the Pre-Installation Meeting related to Subcontractor's Work for approval by Contractor's Quality Manager. Costs or delays incurred as a result of Subcontractor's failure to timely submit an acceptable Quality Control plan are Subcontractor's responsibility.

Subcontractor shall participate in First Work Quality Control Inspections for the initial construction of each definable feature of Subcontractor's Work or as required for coordination with other trades. Subcontractor shall provide appropriately labeled and organized digital photographic documentation of concealed Work.

Subcontractor shall comply with requirements for ongoing Quality Control inspections during the course of construction, prior to the final inspections and acceptance phase, including correction of any noticed deficiency within five (5) working days. Contractor may use Autodesk Construction Cloud (ACC), a web and mobile-based application platform (or similar), to manage Quality Control Issues, Commissioning, and Punchlist. Subcontractor is responsible for all web or mobile device-based input required to resolve any issues.

Subcontractor shall correct any noticed deficiencies during the final inspection and correction phase within five (5) working days. Subcontractor is responsible for conducting its own completion list and its own punchlist.

Upon Subcontractor's completion of these two internal lists, Contractor will create a Subcontractor punchlist. Upon Subcontractor's completion of Contractor's punchlist, the Owner and Architect will create a punchlist for Contractor. This list will be forwarded to Subcontractor for completion.

SAMPLE

**MASTER SUBCONTRACT AGREEMENT
STANDARD MBE/WBE/DVBE PROGRAM**

Date

A. CORPORATE PHILOSOPHY & OBJECTIVE. Swinerton and its affiliates (collectively “Swinerton”) are committed to promoting and increasing participation of minority, women-owned and disabled veteran business enterprises (MBE/WBE/DVBEs) in all purchasing and contract business. Swinerton believes there are a number of benefits in doing business with MBE/ WBE/DVBE companies, not only to help such firms achieve long-term success but also to enhance competition and provide real opportunity for those minority and female businesses who can make important contributions to our industry.

Swinerton will endeavor to provide qualified MBE/WBE/DVBEs with the maximum opportunity to participate as suppliers and subcontractors on all Swinerton construction projects. To meet this commitment, Swinerton will actively seek to and solicit bids from MBE/WBE/DVBE suppliers and subcontractors and expects its Subcontractors to do the same. Affirmative action will be taken consistent with prudent business practice, sound procurement policies and applicable law.

B. PROGRAM. Subcontractors are required to comply with any Prime Contract and Owner requirement with regard to MBE/WBE/DVBE participation on a specific projects. Swinerton requires all Subcontractors to make every effort to maximize opportunity to obtain MBE/WBE/DVBE participation. Failure to provide information requested in bid forms may result in determination that Subcontractor is not a responsive bidder. It is the intent of Swinerton to award construction contracts to the lowest responsive bidder.

During the bidding process, Swinerton will pre-qualify and accept bids from as many MBE/WBE /DVBE firms as is practical. Actual awards are subject to the Owner’s approval and will generally go to the lowest most responsive bidder unless directed otherwise by the Owner.

Non-Minority Subcontractors are expected to work actively to identify second tier and third tier MBE/WBE/DVBE sub-subcontractors.

In order to achieve maximum opportunity for MBE/WBE/DVBE construction participation, Subcontractor may award a portion(s) of the contract to bona fide minority, women or disabled veteran owned firms, minority, women or disabled veteran owner/operated equipment, minority, women or disabled veteran brokers, and minority, women or disabled veteran suppliers or prefabricators. The MBE/WBE/DVBE participants must perform work or provide services and/or supplies and not merely act as a passive conduit.

Swinerton recognizes MBE/WBE/DVBE firms certified by most local, state, federal agencies. However, final acceptability of a certification will be determined on a project by project basis.

C. DEFINITION OF TERMS.

1. A minority is a person who is a citizen or lawful permanent resident of the United States and who is African American, Hispanic, Asian/Pacific Islander, Native American, or Asian-Indian.
 2. “Minority Business Enterprise” (MBE) is any legal entity, organized to engage in commercial transactions that is at least 51 percent owned, controlled and operated by one or more minority persons. All Federal regulations and most other state and local regulations are consistent in this definition.
 3. “Women Business Enterprise” (WBE) is a business owned by one or more women. These minorities must own at least 51 percent of the business and must control both the management and daily business operations.
 4. “Small Business Enterprise” (SBE) is a business which meets the definition of a minority business enterprise or women business enterprise, and in addition, meets the small business size standards of the Small Business Administration.
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5. "Disadvantaged Business Enterprise" (DBE) are for-profit small business concerns where socially and economically disadvantaged individuals own at least a 51% interest and also control management and daily business operations. African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans and women are presumed to be socially and economically disadvantaged. Other individuals can also qualify as socially and economically disadvantaged on a case-by-case basis.
6. "Disabled Veteran Business Enterprise" (DVBE) is a sole proprietorship at least 51 percent owned by one or more disabled veterans or, in the case of publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans.
7. "Good Faith Effort" is an aggressive and sincere effort on the part of a potential contractor to seek out and utilize minority and women business enterprises as potential subcontractors of material, equipment, supplies or services in order to meet the participation goals established.
8. "Responsive" shall mean a subcontractor, who, meets Swinerton's bidding and contracting requirements.

D. GOOD FAITH EFFORTS. If not required by the Prime Contract, good faith efforts by Subcontractors to increase MBE/WBE/DVBE participation are nevertheless encouraged and may include the following:

1. Report of responses, proposals, and bids received from minority-owned, women-owned, and disabled veteran-owned businesses. This report shall indicate action taken in response to the proposals and/or bids received from minority, women and disabled veteran owned businesses and from joint ventures, which include minority, women and disabled veteran owned businesses. In cases where proposals and/or bids have been rejected, reason(s) for rejection shall be indicated.
2. Documented contacts with minority, women and disabled veteran owned firms, minority, women and disabled veteran contractors' associations, minority, women and disabled veteran business development centers, or any related agency, which disseminates bid information to minority, women and disabled veteran owned business enterprises.
3. Description of assistance provided to minority, women and disabled veteran owned firms relative to obtaining plans and specifications, reviewing sub-bid requirements, and referrals for bonding and insurance requirements, if applicable.
4. Documentation of efforts undertaken to encourage non-minority subcontractors to obtain minority, women and disabled veteran business enterprise, second and third tier, participation.
5. Documentation of methods used in soliciting bids from minority, women and disabled veteran owned subcontractors or suppliers such as, but not limited to, minority and women trade association publications, local minority newspapers, or trade association publications, local minority newspapers, or other applicable daily or weekly newspapers, trade journals or other media. These advertisements are to be placed in a timely manner.
6. Documentation of any other effort undertaken to encourage minority, women and disabled veteran business enterprise participation.
7. Following up initial solicitations of interest by contacting the MBE/WBE/DVBES to determine with certainty whether the MBE/WBE/DVBES are interested in performing specific items of work. Telephone logs documenting telephone follow up to all MBE/WBE/DVBES on solicitation letters. This pertains to all outreach agencies that received letters as well. Fax correspondence is acceptable. (Subcontractor may use the enclosed Exhibit "Sub-Subcontractors and Suppliers Listing" to track the information).

Swinerton may, at its discretion, request documentation of Subcontractor's good faith efforts on any project where Subcontractor is providing Work or Services. Subcontractor shall divide to the greatest extent feasible, the contract work into small units to facilitate MBE/WBE/DVBE participation.

SAMPLE

**MASTER SUBCONTRACT AGREEMENT
STANDARD COLLECTIVE BARGAINING AGREEMENTS**

Date

Reference is made to Article 17 of the MSA. Subcontractor acknowledges that Contractor has entered into labor agreements covering certain work at its Project Sites with certain labor unions. A list of relevant labor agreements can be found here: <http://www.swinerton.com/subcontractors>. If Subcontractor's Work involves any work within the jurisdiction of the unions listed, Subcontractor hereby expressly agrees to comply with all the terms and conditions of the applicable labor agreements as if it were a party to said agreements including signatory status if required, and with those requirements further listed below.

Subcontractor further agrees to pay the wage rates, make the required trust fund payments into the respective labor trust funds and observe the hours and all other terms and conditions set forth in the respective labor agreements references below. Subcontractor agrees to comply with the terms and provisions of said agreements setting forth the grievance and arbitration provisions. Furthermore, Subcontractor agrees to comply with the terms and provisions of said agreements setting forth the jurisdiction and scope of work therein for resolution of jurisdictional disputes. In the absence of any such procedure of if such procedure fails to promptly resolve the jurisdictional dispute, Subcontractor agrees, at its own cost and expense and upon request by Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

Subcontractor further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing jobsite work of the type covered by any of the labor agreements specified to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to Subcontractor.

In the event that a Project Labor Agreement ("PLA") has been adopted and implemented for a specific Project, the terms and conditions of such PLA shall prevail in the instance of any conflict between the Subcontract Documents and the PLA.

Subcontractor acknowledges that the terms and conditions of Contractor's labor agreements may require that Subcontractor comply with additional labor agreements with unions affiliated with the listed unions. When the terms and conditions of the referenced labor agreements so require, Subcontractor shall perform its jobsite work pursuant to all terms and conditions of an appropriate labor agreement with a union affiliated with the listed unions.

STATE SPECIFIC PROVISIONS

Date

SECTION 6: PAYMENT

The following modifications to Section 6 of the MSA shall apply in Colorado, Florida, Oregon, Tennessee and Washington:

- **Section 6(a) shall be deleted in its entirety and replaced with:**

Contractor agrees, in consideration of the full and complete performance of the Work by the Subcontractor in accordance with the terms and provisions of the Subcontract Documents, to pay or cause to be paid to the Subcontractor the Subcontract Sum. Subcontractor understands that all payments to Subcontractor will be made only from a special fund and a specific source, namely, from payments made by Owner from time to time to Contractor in respect of Work performed by Subcontractor. No payment, whether a progress or final payment, will be made to Subcontractor unless and until that fund comes into existence. It is an express condition precedent to Contractor's obligation to make payment to Subcontractor that the Contractor shall first have been paid by Owner for the work performed by Subcontractor. Subcontractor acknowledges and agrees the express intent and effect of this paragraph is to affirmatively shift to Subcontractor the risk of nonpayment by Owner. Subject to the satisfaction of this condition precedent, Contractor shall make payments to Subcontractor within seven (7) days after receipt by Contractor of payment from Owner for the work of Subcontract for which payment has been made (or within such shorter period as may be required by law). If Contractor has provided pcoayment or performance bonds for the Project, the obligations of Contractor and its surety under any such bonds to make payment (whether a progress payment or final payment) to any claimant on such bonds is similarly subject to the express condition precedent of payment of funds designated for Subcontractor by Owner.

- **Section 6(b) the first paragraph shall be replaced with:**

If the "pay if paid" provisions of paragraph (a) above are determined by the jurisdiction governing this agreement to be void and unenforceable, then the terms of this paragraph (b) shall apply. If Contractor is not paid by Owner any sum claimed due by Subcontractor, then Contractor's obligation to make payment to Subcontractor with respect to the time for payment shall, in addition to any other conditions set forth in the Subcontract Documents, be subject to the following conditions precedent:

The following modifications to Section 6 of the MSA shall apply in Georgia:

- **Section 6(a) shall be deleted in its entirety and replaced with:**

Contractor agrees, in consideration of the full and complete performance of the Work by the Subcontractor in accordance with the terms and provisions of the Subcontract Documents, to pay or cause to be paid to the Subcontractor the Subcontract Sum. Subcontractor understands that all payments to Subcontractor will be made only from a special fund and a specific source, namely, from payments made by Owner from time to time to Contractor in respect of Work performed by Subcontractor. No payment, whether a progress or final payment, will be made to Subcontractor unless and until that fund comes into existence. It is an express condition precedent to Contractor's obligation to make payment to Subcontractor that the Contractor shall first have been paid by Owner for the work performed by Subcontractor. Subcontractor acknowledges and agrees the express intent and effect of this paragraph is to affirmatively shift to Subcontractor the risk of nonpayment by Owner. Subject to the satisfaction of this condition precedent, Contractor shall make payments to Subcontractor within ten (10) days after receipt by Contractor of payment from Owner for the work of Subcontract for which payment has been made (or within such

shorter period as may be required by law). If Contractor has provided payment or performance bonds for the Project, the obligations of Contractor and its surety under any such bonds to make payment (whether a progress payment or final payment) to any claimant on such bonds is similarly subject to the express condition precedent of payment of funds designated for Subcontractor by Owner.

- **Section 6(b) the first paragraph shall be replaced with:**

If the “pay if paid” provisions of paragraph (a) above are determined by the jurisdiction governing this agreement to be void and unenforceable, then the terms of this paragraph (b) shall apply. If Contractor is not paid by Owner any sum claimed due by Subcontractor, then Contractor’s obligation to make payment to Subcontractor with respect to the time for payment shall, in addition to any other conditions set forth in the Subcontract Documents, be subject to the following conditions precedent:

- **Section 6(d) add the following to the end of the Section:**

In addition, Contractor shall be entitled to retain any legally required withholdings from Subcontractor, (including, without limitation, under Georgia Code of Regulations 560-12.2-.26) until Contractor is legally permitted to release those funds.

The following modifications to Section 6 of the MSA shall apply in Texas:

- **Section 6(a) shall be deleted in its entirety and replaced with:**

Contractor agrees, in consideration of the full and complete performance of the Work by the Subcontractor in accordance with the terms and provisions of the Subcontract Documents, to pay or cause to be paid to the Subcontractor the Subcontract Sum. Subcontractor understands that all payments to Subcontractor will be made only from a special fund and a specific source, namely, from payments made by Owner from time to time to Contractor in respect of Work performed by Subcontractor. No payment, whether a progress or final payment, will be made to Subcontractor unless and until that fund comes into existence. It is an express condition precedent to Contractor’s obligation to make payment to Subcontractor that the Contractor shall first have been paid by Owner for the work performed by Subcontractor. Subcontractor acknowledges and agrees the express intent and effect of this paragraph is to affirmatively shift to Subcontractor the risk of nonpayment by Owner. However, in the event Owner’s nonpayment is due to Contractor’s failure to meet its obligations set forth in the Prime Contract, and such failure is not due to Subcontractor’s failure to meet its obligations pursuant to the Contract Documents, the Contractor accepts the risk of nonpayment by Owner, and Subcontractor will be paid within a reasonable amount of time. In the event Owner’s nonpayment is due to any other reason, Subcontractor accepts the risk of nonpayment. Subject to the satisfaction of this condition precedent, Contractor shall make payments to Subcontractor within seven (7) days after receipt by Contractor of payment from Owner for the work of Subcontract for which payment has been made (or within such shorter period as may be required by law). If Contractor has provided payment or performance bonds for the Project, the obligations of Contractor and its surety under any such bonds to make payment (whether a progress payment or final payment) to any claimant on such bonds is similarly subject to the express condition precedent of payment of funds designated for Subcontractor by Owner.

- **Section 6(b) the first paragraph shall be replaced with:**

If the “pay if paid” provisions of paragraph (a) above are determined by the jurisdiction governing this agreement to be void and unenforceable, then the terms of this paragraph (b) shall apply. If Contractor is not paid by Owner any sum claimed due by Subcontractor, then Contractor’s obligation to make payment to Subcontractor with respect to the time for payment shall, in addition to any other conditions set forth in the Subcontract Documents, be subject to the following conditions precedent:

The following modifications to Section 6 of the MSA shall apply in New York:

- **Section 6(a) shall be deleted in its entirety and replaced with:**

Contractor agrees, in consideration of the full and complete performance of the Work by the Subcontractor in accordance with the terms and provisions of the Subcontract Documents, to pay or cause to be paid to the Subcontractor the Subcontract Sum. Subcontractor understands that all payments to Subcontractor will be made only from a special fund and a specific source, namely, from payments made by Owner from time to time to Contractor in respect of Work performed by Subcontractor. The terms and conditions of the Subcontract Documents shall supersede the provisions of Article 35-E of the NYS General Business Law ("Article 35-E") to the fullest extent permitted by law, including the following terms: (a) the term "invoices" as used in Article 35-E shall be defined as an application for payment submitted by Subcontractor pursuant to the terms of the Subcontract Documents; and (b) the time for Contractor to approve or disapprove all or portion of Subcontractor's application for payment shall be at least twelve business days from Contractor's receipt of Owner or Architect's approval or disapproval of all or a portion of Contractor's application for payment to the Owner to the extent it pertains to Subcontractor's application for payment. The Contractor's payment shall be made on the basis of a duly approved progress payment application for the work performed and materials supplied during the billing cycle. Contractor shall make payments to Subcontractor within seven (7) days after receipt by Contractor of payment from Owner for the Work of Subcontractor for which payment has been made (or within such shorter period as may be required by law).

- **Section 6(b) add a new Section at the end of this Section as 6(b)(iii):**

This clause only controls the right of Subcontractor to receive payment from Contractor and Contractor's Surety (if any) but shall not impair any right of Subcontractor to enforce and foreclose upon any lien upon the Owner's property and/or upon any funds due from Owner to Contractor granted under any lien statute in accordance with New York Lien Law, Section 34, by agreeing to the terms of this clause Subcontractor is not waiving any rights to which it is entitled under the Lien Law. To the extent that this clause could operate to limit or restrict the full extent of Subcontractor's lien rights, this clause is waived in that context only. However, for all other purposes, this clause shall remaining full force and effect.

- **Section 6(d) shall be deleted in its entirety and replaced with:**

Contractor shall retain from progress or other payments hereunder the percentage of retainage the Owner holds back from the Contractor's payment applications to the Owner until after final approval of the work by the Architect and Owner and until ten (10) days after Contractor's receipt of final retention payment from Owner, unless otherwise required by law.

- **Section 6(i) add the following to the end of the Section:**

The Subcontractor acknowledges that it shall hold all payments as a trust fund to be applied before application to any other purpose to payment of: (i) claims of sub-subcontractors, suppliers, materialmen or other entities performing work and employed by Subcontractor, (ii) to claims for utilities furnished and taxes imposed, and to the payment of any premiums on surety bonds and other bonds filed, and any premiums on insurance accruing during performance of the Work, and (iii) any indemnity obligations of Subcontractor hereunder.

SECTION 7: INDEMNIFICATION AND DUTY TO DEFEND

The following modifications to Section 7 of the MSA shall apply in Colorado and North Carolina:

- Section 7 shall be deleted in its entirety and replaced with:

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SUBCONTRACTOR SPECIFICALLY OBLIGATES ITSELF TO PROTECT, IMMEDIATELY DEFEND, INDEMNIFY AND HOLD CONTRACTOR, OWNER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES AND ANY OTHER PERSON INDEMNIFIED BY OWNER (HEREINAFTER "INDEMNITEES") HARMLESS AGAINST CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES, INCLUDING ANY FEES OF ACCOUNTANTS, ATTORNEYS, EXPERTS OR OTHER PROFESSIONALS, OR INVESTIGATION EXPENSES (HEREINAFTER "LOSSES") ARISING OUT OF, RESULTING FROM, OR IN ANY WAY CONNECTED WITH THE SUBCONTRACTOR'S OPERATIONS AND THE WORK, EXCEPT THIS SECTION IS NOT INTENDED TO REQUIRE INDEMNIFICATION FOR A CLAIM, DAMAGE, LOSS OR EXPENSE TO THE EXTENT ARISING OUT OF OR RESULTING FROM THE NEGLIGENCE OF THE CONTRACTOR, OWNER OR ARCHITECT, AND APPLIES ONLY TO THE EXTENT OF THE NEGLIGENCE ATTRIBUTED TO SUCH ACTS OR OMISSIONS BY THE SUBCONTRACTOR, ITS SUB-SUBCONTRACTORS OF ANY TIER, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOM THEY MAY BE LIABLE. SUBCONTRACTOR'S OBLIGATIONS INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING: (I) LOSSES FOR ANY ALLEGED OR ACTUAL VIOLATION OR INFRINGEMENT BY SUBCONTRACTOR (OR SUBCONTRACTOR'S EMPLOYEES OR SUBCONTRACTORS OR CONSULTANTS OR VENDORS OF ANY TIER) OF ANY LAW, STATUTE, CODES, SAFETY OR OCCUPATIONAL HEALTH ORDERS, RULES, REGULATIONS, STANDARDS, ORDERS OR ANY PATENT OR PATENT RIGHT; (II) LOSSES RESULTING FROM INJURY TO OR DEATH OF ANY PERSON (INCLUDING SUBCONTRACTOR'S EMPLOYEES) OR DAMAGE TO PROPERTY OF ANY KIND (INCLUDING ECONOMIC LOSS), INCLUDING THE SUBCONTRACTOR'S WORK OR THE WORK OF OTHERS ON THE PROJECT, WHICH INJURY, DEATH OR DAMAGE ARISES OUT OF OR IS IN ANY WAY CONNECTED WITH THE PERFORMANCE OF SUBCONTRACTOR'S WORK; (III) LOSSES ARISING FROM: (1) CONSTRUCTION LIENS, MECHANICS' LIENS, OR OTHER MATERIALMAN'S LIEN OF ANY SORT, STOP NOTICE CLAIMS AND PAYMENT BOND CLAIMS MADE BY ANY SUB-SUBCONTRACTOR, SUPPLIERS, LABORERS, RENTAL COMPANIES, OR THE LIKE, AND (2) CLAIMS AND LIENS FOR LABOR TAXES, MATERIALS, APPLIANCES, EQUIPMENT, AND SUPPLIES WHATSOEVER, INCLUDING ANY COSTS, ATTORNEYS' FEES, AND INCIDENTAL DAMAGE RESULTING THEREFROM; AND FOR FAILURE BY SUBCONTRACTOR OR ANY PARTY ACTING ON SUBCONTRACTOR'S BEHALF TO COMPLY WITH ALL LAWS, ORDINANCES AND REGULATIONS OF ALL GOVERNMENTAL AUTHORITIES IN ANY MANNER RELATING TO THE SUBCONTRACT WORK; AND (IV) LOSSES ARISING OUT OF ANY BREACH OF OR FAILURE OR ALLEGED FAILURE TO COMPLY WITH THE TERMS OF THE SUBCONTRACT DOCUMENTS.

SUBCONTRACTOR'S INDEMNITY AND HOLD HARMLESS OBLIGATIONS HEREUNDER SHALL APPLY TO ANY ACTS, OMISSIONS, WILLFUL MISCONDUCT, NEGLIGENT CONDUCT, OTHER FAULT, OF ANY PERSON OR ENTITY, INCLUDING BUT NOT LIMITED TO SUBCONTRACTOR'S AGENTS, EMPLOYEES, SUBCONTRACTORS, SUPPLIERS, AND ANY OTHER INDIVIDUAL OR ENTITY FOR WHOM SUBCONTRACTOR MAY BE RESPONSIBLE, WHETHER ACTIVE OR PASSIVE, AND WHETHER OR NOT SOLE OR CONCURRENT WITH THAT OF ANY OTHER PERSON OR ENTITY; EXCEPT THIS SECTION IS NOT INTENDED TO REQUIRE INDEMNIFICATION FOR A CLAIM, DAMAGE, LOSS OR EXPENSE TO THE EXTENT ARISING OUT OF OR RESULTING FROM THE NEGLIGENCE OF THE CONTRACTOR, OWNER OR ARCHITECT, AND APPLIES ONLY TO THE EXTENT OF THE NEGLIGENCE ATTRIBUTED TO SUCH ACTS OR OMISSIONS BY THE SUBCONTRACTOR, ITS SUB-SUBCONTRACTORS OF ANY TIER, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOM THEY MAY BE LIABLE.

SUBCONTRACTOR ACKNOWLEDGES THE SEPARATE AND INDEPENDENT DUTY TO DEFEND SET FORTH IN THIS PARAGRAPH, AND SHALL, REGARDLESS OF WHETHER ANY INDEMNIFICATION OBLIGATIONS LATER ARISES, AND IMMEDIATELY UPON TENDER, AT ITS OWN COST, EXPENSE AND RISK, IMMEDIATELY UPON TENDER DEFEND THE INDEMNITEES, WITH COUNSEL OF THE INDEMNITEES' CHOOSING, IN ANY AND ALL CLAIMS, DEMANDS, ACTIONS, LIEN ACTIONS, SUITS OR OTHER LEGAL, ARBITRAL, ADMINISTRATIVE OR OTHER PROCEEDINGS WHICH MAY BE BROUGHT OR INSTITUTED AGAINST INDEMNITEES. IF AN INDEMNITEE IS FORCED TO PAY FOR ITS OWN DEFENSE BECAUSE SUBCONTRACTOR FAILS TO IMMEDIATELY COMPLY

WITH ITS DEFENSE OBLIGATIONS SET FORTH IN THIS PARAGRAPH 7, SAID INDEMNITEE SHALL BE ENTITLED TO SIMPLE INTEREST ON THE PRINCIPAL BALANCE OF ATTORNEYS' FEES AND COSTS INCURRED AT THE RATE OF 1 ½% MONTHLY.

THE FOREGOING INDEMNITY AND DEFENSE OBLIGATIONS ARE NOT LIMITED BY THE AMOUNT OF ANY AVAILABLE INSURANCE AND ARE IN ADDITION TO ANY EXPRESS OR IMPLIED INDEMNITY OR CONTRIBUTION RIGHTS AVAILABLE TO ANY OF THE INDEMNITEES AT LAW OR IN EQUITY.

ALL WORK DONE AT THE SITE OR IN PREPARING OR DELIVERING MATERIALS OR EQUIPMENT, OR ANY OR ALL OF THEM, TO THE SITE SHALL BE AT THE RISK OF SUBCONTRACTOR EXCLUSIVELY UNTIL THE COMPLETED WORK IS ACCEPTED BY CONTRACTOR.

WITH RESPECT TO CLAIMS AGAINST AN INDEMNITEE ASSERTED BY AN EMPLOYEE OF SUBCONTRACTOR, BY AN EMPLOYEE OF ONE OF SUBCONTRACTOR'S SUBCONTRACTORS, BY AN EMPLOYEE OF ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR BY AN EMPLOYEE OF ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNITY OBLIGATIONS SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR SUBCONTRACTOR OR SUBCONTRACTOR'S SUBCONTRACTORS UNDER WORKER'S COMPENSATION ACTS, DISABILITY ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

ALL INDEMNITY OBLIGATIONS UNDER THE SUBCONTRACT DOCUMENTS SHALL APPLY TO CLAIMS ARISING BOTH BEFORE AND AFTER COMPLETION OF THE WORK UNDER THE SUBCONTRACT DOCUMENTS AND TO CLAIMS ARISING BOTH BEFORE AND AFTER THE TERMINATION OF ANY OF THE SUBCONTRACT DOCUMENTS. THE INDEMNITY OBLIGATIONS SET FORTH IN THIS OR IN ANY OTHER PROVISION OF THE SUBCONTRACT DOCUMENTS SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE ANY OTHER RIGHTS OF INDEMNITY ACCORDED BY LAW OR EQUITY TO THE INDEMNITEES.

CONTRACTOR SHALL BE ENTITLED TO RECOVERY OF ITS ATTORNEYS' FEES AND COSTS ASSOCIATED WITH ENFORCING ANY INDEMNITY AND DUTY TO DEFEND SET FORTH IN THE SUBCONTRACT DOCUMENTS.

The following modifications to Section 7 of the Terms and Conditions of the MSA shall apply in Oregon:

- The second paragraph of Section 7, Line 6, the word "ACTIVE" shall be deleted.

The following modifications to Section 7 of the Terms and Conditions of the MSA shall apply in Texas:

- Section 7 shall be deleted in its entirety and replaced with:

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SUBCONTRACTOR SPECIFICALLY OBLIGATES ITSELF TO PROTECT, IMMEDIATELY DEFEND, INDEMNIFY AND HOLD CONTRACTOR, OWNER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES AND ANY OTHER PERSON INDEMNIFIED BY OWNER (HEREINAFTER "INDEMNITEES") HARMLESS AGAINST CLAIMS, DAMAGES, LOSSES, COSTS, EXPENSES, INCLUDING ANY FEES OF ACCOUNTANTS, ATTORNEYS, EXPERTS OR OTHER PROFESSIONALS, OR INVESTIGATION EXPENSES (HEREINAFTER "LOSSES"), ARISING OUT OF, RESULTING FROM, OR IN ANY WAY CONNECTED WITH THE SUBCONTRACTOR'S OPERATIONS AND THE WORK. SUBCONTRACTOR'S OBLIGATIONS INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING: (I) LOSSES FOR ANY ALLEGED OR ACTUAL VIOLATION OR INFRINGEMENT BY SUBCONTRACTOR (OR SUBCONTRACTOR'S EMPLOYEES OR SUBCONTRACTORS OR CONSULTANTS OR VENDORS OF ANY TIER) OF ANY LAW, STATUTE, CODES, SAFETY OR OCCUPATIONAL HEALTH ORDERS, RULES, REGULATIONS, STANDARDS, ORDERS OR ANY PATENT OR PATENT RIGHT; (II) LOSSES RESULTING FROM INJURY TO OR DEATH OF ANY PERSON (INCLUDING SUBCONTRACTOR'S EMPLOYEES) OR DAMAGE TO PROPERTY OF ANY KIND (INCLUDING ECONOMIC LOSS), INCLUDING THE SUBCONTRACTOR'S WORK OR THE WORK OF OTHERS ON THE PROJECT, WHICH INJURY, DEATH OR DAMAGE ARISES OUT OF OR IS IN ANY WAY CONNECTED

WITH THE PERFORMANCE OF SUBCONTRACTOR'S WORK; (III) LOSSES ARISING FROM: (1) CONSTRUCTION LIENS, MECHANICS' LIENS, OR OTHER MATERIALMAN'S LIENS OF ANY SORT, STOP NOTICE CLAIMS AND PAYMENT BOND CLAIMS MADE BY ANY SUB-SUBCONTRACTORS, SUPPLIERS, LABORERS, RENTAL COMPANIES, OR THE LIKE, AND (2) CLAIMS AND LIENS FOR LABOR TAXES, MATERIALS, APPLIANCES, EQUIPMENT, AND SUPPLIES WHATSOEVER, INCLUDING ANY COSTS, ATTORNEYS' FEES, AND INCIDENTAL DAMAGE RESULTING THEREFROM; AND FOR FAILURE BY SUBCONTRACTOR OR ANY PARTY ACTING ON SUBCONTRACTOR'S BEHALF TO COMPLY WITH ALL LAWS, ORDINANCES AND REGULATIONS OF ALL GOVERNMENTAL AUTHORITIES IN ANY MANNER RELATING TO THE SUBCONTRACT WORK; AND (IV) LOSSES ARISING OUT OF ANY BREACH OF OR FAILURE OR ALLEGED FAILURE TO COMPLY WITH THE TERMS OF THE SUBCONTRACT DOCUMENTS.

SUBCONTRACTOR'S INDEMNITY AND HOLD HARMLESS OBLIGATIONS HEREUNDER SHALL APPLY TO ANY ACTS, OMISSIONS, WILLFUL MISCONDUCT, NEGLIGENT CONDUCT, OTHER FAULT, OR LIABILITY WITHOUT FAULT OF ANY PERSON OR ENTITY FOR WHOM SUBCONTRACTOR IS OR MAY BE RESPONSIBLE, WHETHER ACTIVE OR PASSIVE, AND WHETHER OR NOT SOLE OR CONCURRENT WITH THAT OF ANY OTHER PERSON OR ENTITY; EXCEPT THAT THIS INDEMNITY OBLIGATION SHALL NOT REQUIRE THAT SUBCONTRACTOR INDEMNIFY INDEMNITEES HEREIN AGAINST CLAIMS ARISING FROM HIS, HER, OR ITS NEGLIGENCE OR WILLFUL MISCONDUCT.

SUBCONTRACTOR ACKNOWLEDGES THE SEPARATE AND INDEPENDENT DUTY TO DEFEND SET FORTH IN THIS PARAGRAPH, AND SHALL DEFEND THE REFERENCED PARTIES UPON DEMAND REGARDLESS OF WHETHER ANY INDEMNIFICATION OBLIGATIONS LATER ARISES. SUBCONTRACTOR AGREES THAT IT SHALL (AT THE OPTION OF THE INDEMNITEE) AT ITS OWN COST, EXPENSE AND RISK, IMMEDIATELY UPON TENDER DEFEND THE INDEMNITEES, WITH COUNSEL OF THE INDEMNITEES' CHOOSING, IN ANY AND ALL CLAIMS, DEMANDS, ACTIONS, LIEN ACTIONS, SUITS OR OTHER LEGAL, ARBITRAL, ADMINISTRATIVE OR OTHER PROCEEDINGS WHICH MAY BE BROUGHT OR INSTITUTED AGAINST INDEMNITEES. SUBCONTRACTOR'S DUTY TO DEFEND THE INDEMNITEES SHALL ARISE IMMEDIATELY UPON NOTIFICATION AND DEMAND BY AN INDEMNITEE TO SUBCONTRACTOR. IF AN INDEMNITEE IS FORCED TO PAY FOR ITS OWN DEFENSE BECAUSE SUBCONTRACTOR FAILS TO IMMEDIATELY COMPLY WITH ITS DEFENSE OBLIGATIONS SET FORTH IN THIS PARAGRAPH 7, SAID INDEMNITEE SHALL BE ENTITLED TO SIMPLE INTEREST ON THE PRINCIPAL BALANCE OF ATTORNEYS' FEES AND COSTS INCURRED AT THE RATE OF 1 ½% MONTHLY.

THE FOREGOING INDEMNITY AND DEFENSE OBLIGATIONS ARE NOT LIMITED BY THE AMOUNT OF ANY AVAILABLE INSURANCE AND ARE IN ADDITION TO ANY EXPRESS OR IMPLIED INDEMNITY OR CONTRIBUTION RIGHTS AVAILABLE TO ANY OF THE INDEMNITEES AT LAW OR IN EQUITY.

ALL WORK DONE AT THE SITE OR IN PREPARING OR DELIVERING MATERIALS OR EQUIPMENT, OR ANY OR ALL OF THEM, TO THE SITE SHALL BE AT THE RISK OF SUBCONTRACTOR EXCLUSIVELY UNTIL THE COMPLETED WORK IS ACCEPTED BY CONTRACTOR.

WITH RESPECT TO CLAIMS AGAINST AN INDEMNITEE ASSERTED BY AN EMPLOYEE OF SUBCONTRACTOR, BY AN EMPLOYEE OF ONE OF SUBCONTRACTOR'S SUBCONTRACTORS, BY AN EMPLOYEE OF ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR BY AN EMPLOYEE OF ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNITY OBLIGATIONS SET FORTH HEREIN SHALL APPLY REGARDLESS OF WHETHER THE BODILY INJURY SICKNESS, DISEASE OR DEATH OF SUCH EMPLOYEE IS CAUSED OR IS ALLEGED TO BE CAUSED BY THE NEGLIGENCE OF AN INDEMNITEE, IT BEING THE EXPRESS INTENT OF CONTRACTOR AND SUBCONTRACTOR THAT SUBCONTRACTOR IS TO DEFEND, INDEMNIFY AND HOLD THE INDEMNITEES HARMLESS FROM THEIR OWN NEGLIGENCE, WHETHER IT IS THE SOLE OR THE CONCURRING CAUSE OF THE OF THE BODILY INJURY, SICKNESS OR DEATH. SUBCONTRACTOR'S INDEMNITY OBLIGATIONS FOR SUCH CLAIMS SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR SUBCONTRACTOR OR SUBCONTRACTOR'S SUBCONTRACTORS UNDER WORKER'S COMPENSATION ACTS, DISABILITY ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

ALL INDEMNITY OBLIGATIONS UNDER THIS SUBCONTRACT AGREEMENT SHALL APPLY TO CLAIMS ARISING BOTH BEFORE AND AFTER COMPLETION OF THE WORK UNDER THE SUBCONTRACT DOCUMENTS AND TO CLAIMS ARISING BOTH BEFORE AND AFTER THE TERMINATION OF ANY OF THE SUBCONTRACT DOCUMENTS.

THE INDEMNITY OBLIGATIONS SET FORTH IN THIS OR IN ANY OTHER PROVISION OF THE SUBCONTRACT DOCUMENTS SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE ANY OTHER RIGHTS OF INDEMNITY ACCORDED BY LAW OR EQUITY TO THE INDEMNITEES.

CONTRACTOR SHALL BE ENTITLED TO RECOVERY OF ITS ATTORNEYS' FEES AND COSTS ASSOCIATED WITH ENFORCING ANY INDEMNITY AND DUTY TO DEFEND SET FORTH IN THE SUBCONTRACT DOCUMENTS.

The following modifications to Section 7 of the Terms and Conditions of the MSA shall apply in Washington:

- The second paragraph of Section 7, Line 6, the word "ACTIVE" shall be replaced with "SOLE."
- The second paragraph of Section 7, the following shall be added at the end of the paragraph:

WITH RESPECT TO CLAIMS ARISING OUT OF THE CONCURRENT NEGLIGENCE OF SUBCONTRACTOR AND AN INDEMNITEE, THIS SECTION APPLIES TO THE EXTENT OF SUBCONTRACTOR'S NEGLIGENCE.

- The sixth paragraph of Section 7 shall be deleted in its entirety and replaced with:

WITH RESPECT TO CLAIMS AGAINST AN INDEMNITEE, ASSERTED BY AN EMPLOYEE OF SUBCONTRACTOR, BY AN EMPLOYEE OF ONE OF SUBCONTRACTOR'S SUBCONTRACTORS, BY AN EMPLOYEE OF ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR BY AN EMPLOYEE OF ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, SUBCONTRACTOR'S INDEMNITY OBLIGATIONS SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR SUBCONTRACTOR OR SUBCONTRACTOR'S SUBCONTRACTORS UNDER WORKER'S COMPENSATION ACTS, DISABILITY ACTS, OR OTHER EMPLOYEE BENEFIT ACTS, INCLUDING BUT NOT LIMITED TO RCW 51, ET. SEQ.

The following modifications to Section 7 of the Terms and Conditions of the MSA shall apply in New York:

- The second paragraph of Section 7, Line 6, the words "FOR BODILY INJURY OR DAMAGE TO PROPERTY" shall be added after the word "CLAIMS" and the word "ACTIVE" shall be deleted.
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