



Vendor No.: _____

MASTER SUBCONTRACT AGREEMENT

THIS MASTER SUBCONTRACT AGREEMENT (“MSA” or “Agreement”) is made this [DAY] day of [MONTH], [YEAR], between Swinerton Builders, with an office located at 2001 Clayton Road, 7th Floor, Concord, CA 94520 (“Contractor”), and [SUBCONTRACTOR NAME], 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	Code of Conduct	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.

SUBCONTRACTOR NAME,		Subcontractor	SWINERTON BUILDERS, Contractor
By: _____		By: _____	
Name, Title _____		Name, Title _____	
License No.:	_____	License No.:	AL: License No. 51879 AZ: License No. ROC 088550, ROC 297261 AR: License No. 0349530622 CA: License No. 92 CT: License No. MCO.0903780 DE: License No. DE-2022000005609 FL: License No. CGC1537550 GA: License No. GCCO008605, GCCO008992 HI: License No. CT-3753 ID: License No. RCE-25689 IA: License No. C125019 MN: License No. IR797086 MT: License No. 162342 NE: License No. 46274-24 NV: License No. 4045A NJ: License No. 720418 NM: License No. 89083 NY: License No. 24-64ES5-CR NC: License No. 73913 ND: License No. 54055 OR: License No. 78483 RI: License No. 38954 SC: License No. CLG119533 TN: License No. 68711 UT: License No. 227085-5501 VA: License No. 2705152456 WA: License No. SWINEB*992DR

****License No. set forth in a WO will take precedence with respect to that WO and State.**