

Exhibit D to
The Weitz Company, LLC
Standard Form Subcontract Agreement
Waterford, Phase 2, Standard Terms and Conditions September - 2025

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Section 0. Safety.

0.1 Safety Precautions

The Subcontractor shall take all necessary safety precautions with respect to performance of the Subcontractor's Work and shall comply with applicable safety measures and with applicable laws, ordinances, rules, regulations, and orders of public authorities and with the requirements of the Subcontract Documents for the safety of persons and property. The Subcontractor agrees to participate in periodic site safety meetings as requested by Contractor, including weekly "toolbox talks". The Subcontractor shall comply with all Project Safety Requirements as requested by Contractor.

0.2 Safety Protections

The Subcontractor and its employees must, at a minimum, comply with all applicable laws, codes, rules, regulations and requirements pertaining to the safe performance of its Work, including the Federal Occupational Safety and Health Act (OSHA), state OSHA programs, and Contractor's Safety rules and directives. Subcontractor agrees to provide protection as is necessary to protect all persons and property from Subcontractor's operations. Subcontractor shall effectively secure and protect the Subcontractor's Work. The Subcontractor shall furnish all safety equipment required to safely perform the Subcontractor's Work.

0.3 Assumption of Safety Responsibility

The Subcontractor agrees and acknowledges that it has assumed full responsibility and liability for safety precautions in connection with the construction means, methods, techniques, sequences, supervision and procedures pertaining to Subcontractor's Work.

0.4 Fines

Subcontractor agrees to reimburse Contractor for any and all fines, penalties, and attorneys' fees incurred by Contractor as a result of or arising out of Subcontractor's Work, including but not limited to OSHA.

0.5 Safety Requirements

The following minimum safety requirements are also applicable to and will be enforced on this Project. Specific questions regarding these safety requirements should be directed to the Contractor.

0.5.1 Unsafe Conditions

BE ALERT! All un-safe conditions shall be reported immediately to the Contractor's Project Superintendent and to the Subcontractor's Project Site Supervisor. No person is required to work under

any unsafe conditions. OSHA Standard 1926.20. Subcontractor's project site supervisor or safety manager shall walk the jobsite weekly to identify and correct any unsafe conditions created by Subcontractor or within its scope of work. Such manager shall immediately report any unsafe conditions identified and notify Contractor of the action taken to correct the condition.

0.5.2 Reporting Injuries

All accidents or injuries deemed Recordable, Lost Time or Restricted by OSHA, or non-injury incidents resulting in property damage or high potential for severe injury shall be reported immediately to the Contractor's Project Superintendent, giving full details and identifications and statements of any witnesses. The Subcontractor shall be responsible for completing a written injury and/or incident investigation in accordance with referenced procedures and providing such report to the Contractor in a timely manner.

0.5.3 Project Safety Officer

The Contractor has the authority to remove any of the Subcontractor's unsafe equipment, tools, scaffolding or other unsafe items, and has the authority to remove any Subcontractor employees that do not comply with these safety requirements. Subcontractors that receive two (2) written notices from the Contractor for failure to follow OSHA safety standards or these safety requirements, may have their payment withheld until such time as the managing principal of the Subcontractor has met with the Contractor and agreed on a plan to eliminate future safety violations. Continuing violations of these safety requirements may also result in termination of the Subcontractor's continuing performance under this Agreement.

0.5.4 Fall Protection

All work performed at elevations over 6 feet must have a 100 percent fall protection or prevention system. This includes, but is not limited to all leading edge work, iron connecting, working off of elevated work platforms (scaffoldings), and residential type construction. Only methods referenced and meeting or exceeding OSHA Standard 1926 Subpart M shall be used. "Monitors" or "safety zones" are NOT an acceptable means of fall protection. The Subcontractor is responsible for enforcement of its fall protection plan.

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0.5.5 Barricades

Barricades or covers meeting OSHA Standards are required around excavations, holes or openings in floors or roofs, edges of roofs, elevated platforms, around certain types of overhead work and whenever necessary to warn or prevent persons or equipment from falling.

0.5.6 GFCI Protection

All work using cords or power tools must utilize Ground Fault Circuit Interrupter (GFCI) protection. Only authorized electricians shall perform electrical work.

0.5.7 Excavations

Excavations must be sloped, shored or shielded, and must meet all other OSHA requirements. Before digging in any location, the Subcontractor must check to ensure that all underground utilities have been located and properly marked.

0.5.8 Lockout/Tag

Subcontractor's employees shall comply with OSHA Standard 1910.147 lockout/tag procedures when working on energized systems or equipment. The Subcontractor may utilize Contractor's lockout/tag procedures.

0.5.9 Personal Protective Equipment

All of the Subcontractor's employees on the Project site must use proper personal protective equipment (PPE) and clothing suited to the Work and the Work environment. The Subcontractor is responsible for providing its personnel the proper PPE which includes but is not limited to: gloves where applicable; no dangling or loose clothing or jewelry may be worn around moving machinery; shirts which cover the shoulder, work boots or shoes and long pants are required; helmets must be worn by all workers, supervisors, clients, visitors and vendors at all times; eye and face protection (meeting ANSI Z87.1-1989 standards) must be worn at all times on the Project site. Additional forms of eye protection may also be required as prescribed by OSHA standards and manufacturer recommendations. Steps must be taken to protect other workers and the public from eye injury whenever tasks producing flying chips or particles are being performed; respirators will be used when an employee is exposed to airborne hazards (proper training, physical exam and a fit test are required; 1910.134); hearing protection in the form of earmuffs or approved ear plugs shall be worn

on all high noise level jobs as required; no radios will be allowed on the Project site (other than in office) other than 2-way radios for jobsite communication; and Subcontractor shall maintain appropriate first aid equipment and supplies in its Work areas at all times.

0.5.10 Housekeeping

Subcontractor shall maintain good housekeeping in and around its Work areas at all times. Stack materials so that safe clearances are maintained and falling is prevented. Keep all walkways and aisles clear. Place cords and air hoses to one side to allow safe passage. Remove loose overhead material, dispose of garbage and remove oil and water spillage. Immediately remove or bend over nails protruding from lumber. Secure all stored or loose materials (especially on roof) to prevent it from becoming airborne.

0.5.11 Illumination

All of Subcontractor's Work areas shall be properly illuminated at all times.

0.5.12 Ventilation

All of Subcontractor's employees performing confined space work shall be properly trained. All necessary requirements contained in OSHA Standard 1910.146 must be met. Subcontractor shall maintain proper ventilation in enclosed areas when using equipment.

0.5.13 Ladders

Subcontractor shall train its employees in the safe use of ladders and scaffolding as required. Defective ladders and scaffold components shall be tagged and removed from service.

0.5.14 Tools and Equipment

Tools, equipment, trucks, loaders, backhoes, cranes and forklifts shall be used, operated and maintained properly to prevent injury. No Subcontractor employee shall operate any equipment unless specifically authorized and trained to do so. Powder-actuated tools require certified training before use. Power tools shall be operated only by authorized personnel and with guards in-place. Hand tools such as hammers and chisels shall be properly used and maintained. All slings, choker and rigging equipment shall be free of defects. All hooks must have safety latches or keepers. Taglines shall be used to control loads when their use does not create an additional hazard. Tampering with or unauthorized use or removal of fire extinguishers from assigned locations

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is prohibited. All of Subcontractor's tools and equipment must be inspected daily by Subcontractor before use. Damaged tools shall be tagged "DO NOT USE" and removed from service immediately. Documentation of training and inspections shall be provided to the Contractor upon request.

0.5.15 Safety Plan

A written Project specific safety plan acceptable to Contractor shall be provided to Contractor prior to commencement of the Work, and a Job Safety Analysis ("JSA") shall be performed for all high hazard or non-routine work upon specific request of the Contractor. Tasks which are not considered to be high hazard require completion of a WHAT Pre-Task Plan. The WHAT Pre-Task Plan is to be completed by the crew performing the work before each new task. WHAT Pre-Task Plan books will be provided by the Contractor for each of the Subcontractor's crews as needed upon request by the Subcontractor.

0.5.16 Safety Meetings

Attendance at weekly Tool Box Talks is required for all Subcontractor personnel and documentation of meetings is mandatory. The Subcontractor shall ensure that its personnel watch the Contractor's Subcontractor Safety Introduction video when requested to do so by the Contractor.

0.5.17 Hazard Communication

If Subcontractor or its sub-subcontractors bring any material to the Project site which requires notification to employees of the Subcontractor, Contractor or its other subcontractors, suppliers, vendors, materialmen and/or local fire departments or other authorities, in conformance with applicable environmental, hazardous substance, right to know, or similar laws, the Contractor shall be provided with material safety data sheets to be available at the Project site for inspection and reference prior to delivery of such products or materials to the job-site. Subcontractor shall provide appropriate training for its job-site personnel. The Subcontractor shall maintain a hazardous material program, including proper placarding of all locations where hazardous materials are located, in conformance with the aforementioned laws.

0.5.18 Unsafe Acts

Subcontractor's employees who report for work under the influence of intoxicants or narcotics or engage in the consumption of them on the Project site will be removed from the Project site.

Subcontractor's employees who engage in horseplay, fistfights, unsafe acts, whistling, yelling at the public or obscene gestures will be removed from the Project site. Weapons of all types, including firearms, are strictly forbidden on the Project site.

0.5.19 Visitors

All of Subcontractor's visitors to the Project site must check in with the Contractor prior to going on site.

0.5.20 Competent Person

The Subcontractor shall identify their OSHA Competent Person for the work that they perform in either their written safety plan or in a memo form submitted at the beginning of Work.

0.5.21 Equipment Usage

The undersigned Subcontractor or Supplier ("Subcontractor"), and for its officers, directors, members, employees, agents and assigns, in consideration for its use of equipment (including, but not limited to, scaffolding) ("Equipment") provided by Contractor or others, hereby releases, waives and discharges Contractor and the Project Owner, and each of their respective affiliates, agents, officers, employees, insurers, sureties and other subcontractors and suppliers (collectively, the "Released Parties") from any and all claims, losses, costs including attorneys' fees, damages, injury, death, expenses, and liability arising out of, relating to or in connection with the Subcontractor's use of the Equipment. Subcontractor further agrees, to the maximum extent allowed by applicable law, to defend, indemnify, and hold harmless the Released Parties from any and all claims by whomsoever made, losses, costs including attorneys' fees, damages, injury, death, expenses, and liability arising out of, relating to or in connection with any acts or omissions of, or use of the Equipment by, the Subcontractor or the Subcontractor's Agents, servants or employees, and regardless of the active or passive negligence or contribution by the Released Parties. The Subcontractor represents and affirms that it has or has caused the Equipment to be fully inspected and acknowledges that the Equipment is in good and safe operating condition and repair and accepts the Equipment in its present condition and repair including latent or hidden defects, if any. The Subcontractor agrees that it is responsible for

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returning the equipment in as good condition as it existed prior to use by the Subcontractor. The Subcontractor shall take reasonable precautions (including, without limitation, providing any and all necessary training) for the safety of and should provide reasonable protection to prevent damage, injury, or loss to persons or property arising out of, relating to or in connection with its use of the Equipment. Subcontractor shall purchase and maintain comprehensive general liability insurance that shall include coverage on an occurrence basis and for any and all resulting claims, losses, costs including attorney's fees, damages, injury, death, expenses, and liability arising out of, relating to or in connection with any acts or omissions of or the use of the equipment by Subcontractor, which shall include the Project Owner and Contractor as additional insured's using ISO additional insured endorsements CG20 10 07 04 and CG 20 37 07 04, or equivalent, and such insurance shall be primary and non contributory with any insurance the Release Parties may have. Subcontractor waives all right of action and subrogation against the Released Parties in connection with said insurance. The Subcontractor agrees to make no modifications to the equipment without prior written consent of the owner of the Equipment and / or Manufacturer. In the event any portion of this release and indemnity is held to be invalid, it shall be interpreted so as to allow the fullest release and indemnity permitted by law.

0.5.22 Project Site Communications

Subcontractor shall have on site at all times a supervisor (or multiple supervisors if required by crew size) that is able to speak, understand and communicate in English all job site safety and contractual requirements, obligations and responsibilities to Subcontractor's workers and employees. Subcontractor shall require its' lower tier subcontractors and suppliers to comply with this requirement and shall incorporate this section in its' agreements with lower tier subcontractors and suppliers.

0.5.22 Consent to Use of Drones

Subcontractor and its employees consent to the use of an unmanned aerial system (UAS) at the Project

site if approved by Contractor, and specifically to any UAS flyovers.

Section 1. The Work

1.1 Subcontractor's Work

Except as otherwise provided in the Agreement, Subcontractor's Work includes all labor; supervision; materials; equipment; services; supplies; tools; facilities; transportation; storage; receiving; licenses; inspections; certifications; overhead; profit; insurance; and other items required or reasonably inferable from the Subcontract Documents to properly and timely perform and complete the Subcontractor's Work. The intent of the Subcontract Documents is to include all items necessary for the proper execution and completion of the Subcontractor's Work. Performance by the Subcontractor shall be required to the extent reasonably inferable from the Subcontract Documents as being necessary to produce the intended results. The Subcontract Documents are complementary and what is required by one shall be required by all.

1.2 Prime Contract Rights and Responsibilities To the extent that provisions of the Prime Contract apply to the Subcontractor's Work, (i) the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under the Prime Contract, assumes toward the Owner, the Architect, or others, including (by way of example) Subcontractor's proportionate share of any damages which Contractor may be liable to Owner, and (ii) the Subcontractor shall be entitled to the same benefits and rights which the Contractor, under the Prime Contract, is granted against the Owner. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor that the Owner, under the Prime Contract, has against the Contractor. The provisions of the Subcontract Documents shall be in addition to and not in substitution of any of the provisions of the Prime Contract. The Prime Contract is available for review by the Subcontractor at the Contractor's office.

1.3 Sub-subcontractor Rights and Responsibilities

If the Subcontractor enters into agreements with sub-subcontractors, suppliers, manufacturers, employees, agents, vendors or other persons (collectively "sub-subcontractors") performing portions of the Subcontractor's Work, the sub-subcontractors shall be bound to the Subcontractor, to the extent of the Subcontractor's Work to be

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performed by the sub-subcontractors, to the same extent the Subcontractor is bound to the Contractor, and the sub-subcontractors shall assume all of the obligations and responsibilities which the Subcontractor assumes under the Subcontract Documents. The Subcontractor shall be responsible to the Contractor for acts and omissions of the sub-subcontractors. Nothing contained in the Subcontract Documents shall create any contractual or third party beneficiary relationship between any parties other than the Contractor and the Subcontractor. Each such sub-subcontract and purchase order is assigned to Contractor; provided that such assignment (i) will be effective only upon termination of the Subcontractor's continuing performance under the Agreement and only for those sub-subcontracts and purchase orders which the Contractor accepts by notifying the sub-subcontractor and vendor in writing, and (ii) will be subject to the rights of the surety, if any, obligated under bond relating to the Subcontract.

1.4 Related Work

Subcontractor shall carefully inspect any work performed by others that is to precede, receive, align, abut, or otherwise relate to the Subcontractor's Work, and shall immediately notify Contractor in writing of any apparent defects or inconsistencies. The Subcontractor is responsible for coordinating and verifying the dimensions, measurements and elevations at the Project site relevant to Subcontractor's Work. If Subcontractor commences the Subcontractor's Work without such written notice, such commencement shall constitute acceptance of all such work performed by others and of all such field conditions, and all costs incurred in connection with Subcontractor's Work as a result thereof shall be borne by Subcontractor.

1.5 Investigations

The Subcontractor represents and agrees that it has carefully examined and understands all of the Subcontract Documents; has investigated the nature of, locality and Project site and the prevailing weather and climatological conditions; supply factors; storage and access limitations; available reports describing underground conditions; labor market availability and other conditions and difficulties under which the Subcontractor's Work is to be performed. The Subcontractor further represents and agrees that it enters into the Agreement on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any reports, information, opinions or representations of the Contractor. The Subcontractor further represents

and agrees that the Subcontract Documents and any Project schedules are sufficiently complete to have enabled it to determine the cost of the Subcontractor's Work and that the Drawings and Specifications are sufficiently complete to enable it to properly and timely perform the Subcontractor's Work outlined therein in accordance with applicable laws, ordinances, building codes and regulations, and otherwise to fulfill all of its obligations under the Subcontract Documents.

1.6 Standards

The Subcontractor recognizes the relationship of trust and confidence established between it and the Contractor by the Agreement. The Subcontractor covenants with the Contractor to furnish its best skill and judgment and to cooperate in forwarding the interests of the Contractor and Owner, and to perform the Subcontractor's Work in a good and workmanlike manner. The Subcontractor agrees to furnish efficient business administration and superintendence and to keep upon the Project site at all times an adequate supply of competent workmen and quality materials, tools, equipment and supplies, and to secure execution of the Subcontractor's Work in the best, safest and soundest way and in the most expeditious and economical manner consistent with the interests of the Contractor and Owner. Subcontractor's Work shall be completed in compliance with the standards described in the Prime Contract and in the Subcontract Documents, or, if no such standards are specified, in compliance with industry standards. Subcontractor's relationship to the Contractor is that of an independent contractor.

1.7 Prime Contract

The "Prime Contract" is that certain agreement entered into between Owner and Contractor in connection with the Project, together with the contract documents enumerated therein, including General Conditions, Supplementary General Conditions or Special Conditions, if any, Drawings, Specifications, Addenda and Amendments and Change Orders thereto, and collateral agreements with lenders providing financing for the construction of the Project. All defined terms not otherwise defined in the Subcontract Documents are used as defined in the Prime Contract.

1.8 Subcontract Documents

The "Subcontract Documents" consist of (i) any Modifications to the Standard Form Subcontract Agreement Between Contractor and Subcontractor ("Agreement") entered into after the date of the Agreement; (ii) **Exhibit F**, if any; (iii) **Exhibit A**; (iv) the

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Agreement; (v) **Exhibit C**; (vi) **Exhibit G**, if any; (vii) **Exhibit D**; (viii) **Exhibit B**; (ix) any other Exhibits to the Agreement in letter order; (x) the Sub-contractor's payment bond and its performance bond, if required; and (xi) the Prime Contract. The Subcontract Documents together form the contract between the parties thereto, and are as fully a part of the Agreement as if attached thereto or repeated therein. In the event of any conflicts in the Subcontract Documents, the provisions shall govern in priority in the order listed in this **Section 1.8**; provided, that notwithstanding the foregoing, if the Prime Contract requires stricter performance or requirements than the remaining Subcontract Documents, the Subcontractor shall provide the stricter performance or requirements. Subject to the preceding sentence, where a conflict exists between the Contract Documents, large-scale drawings shall take precedence over small-scale drawings; figures, dimensions and notes of materials shall take precedence over graphic representations; and express intentions of priority shall apply. The Subcontract Documents are available for review by the Subcontractor at the Contractor's office.

1.9 Last Planner System

If applicable to the Project, the Contractor will be utilizing components of the Last Planner System™ (“LPS”) on this Project. Subcontractor shall participate in the utilization of the LPS as it relates to Subcontractor’s Work and cooperate with Contractor in the utilization of this system. Subcontractor’s onsite supervisors shall participate in all meetings associated with the Last Planner System including but not limited to a Pull Planning Sessions, Look Ahead Planning, weekly work plan meetings and daily stand up meetings with Contractor and other trades for the coordination of its Work as it pertains to each major phase of the Project. A “Make Work Ready Plan” will be distributed by the Contractor to Subcontractor, which will outline activities coming up in the following six weeks. Based upon the Make Work Ready Plan, Subcontractor shall, on a weekly basis, prepare a “Weekly Work Plan” for submission to the Contractor that identifies the Subcontractor’s crew assignments for the following week.

1.10 Building Information Modeling

To the extent required by the Contractor or the Prime Contract, Subcontractor agrees to fully participate in building information modeling or equivalent (“BIM”) by providing staff and resources necessary to prepare BIM drawings and files (that are compatible with the BIM software used for the Project), diligently working through the coordination process which may be managed by the Contractor or others, purchasing and maintaining computer hardware and software required for BIM participation (if any), attending coordination meetings, and all other work necessary to utilize BIM on the Project. Subcontractor shall verify that all information provided by the Subcontractor to be used in the BIM model is accurate including but not limited to dimensions, material types, and field conditions. Subcontractor shall transmit updated as-built models that accurately reflect installed conditions at Contractor-requested intervals and frequency. Notwithstanding anything to the contrary, Subcontractor acknowledges that it remains obligated to perform the Subcontract Work in accordance with the Subcontract Documents as defined in **Section 1.8**.

Section 2. Items to be provided by Subcontractor

2.1 Insurance Certificates

Prior to commencing the Subcontractor's Work but in any event within five (5) working days after the receipt of the Agreement by Subcontractor, the Subcontractor shall furnish certificates to the Contractor evidencing insurance with conditions and with coverage limits not less than those specified in **Section 4**. Such insurance shall be in such form and with an insurer satisfactory to Contractor and authorized to do business in the jurisdiction of the Project. Costs of the insurance are included in the Subcontract Sum. Prior to first payment to Subcontractor, such certificates and endorsements shall be provided to Contractor.

2.2 Bonds

If required per **Exhibit A**, prior to commencing the Subcontractor's Work but in any event within five (5) working days after the receipt of the Agreement by Subcontractor, the Subcontractor shall purchase and provide (i) a separate payment bond covering faithful payment of all of Subcontractor's payment obligations arising in connection with the Subcontract

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Documents and Subcontractor's Work thereunder, and (ii) a separate performance bond covering faithful performance of all of Subcontractor's performance obligations arising in connection with the Subcontract Documents and Subcontractor's Work thereunder, including warranty periods. Such bonds shall provide for penal sums equal to the Subcontract Sum. The penal sums on all Subcontractor bonds shall be automatically adjusted by any modifications. Subcontractor's surety waives all requirements for notice of modifications. Such bonds shall be in such form and with a surety satisfactory to Contractor and authorized to do business in the jurisdiction of the Project. If the Contractor so requests, the Owner, the Owner's lenders, and other persons with interests in the Project shall be added as additional obligees on the Subcontractor's bonds. The bonds shall not be adversely affected by modifications or prepayments to Subcontractor, regardless of whether the surety has been provided with prior notice thereof, and surety's prior consent thereof shall not be required. The reference to this Agreement within the Subcontractor's performance bond, if any, shall be deemed as an express acknowledgment and consent by surety to be bound by all duties, liabilities and obligations which Subcontractor has to Contractor in the event of delays or time related damages suffered by Contractor as a result of Subcontractor's performance or failure to perform.

2.3 Subcontractor Default Insurance Program

Unless Contractor elects to bond Subcontractor as identified on **Exhibit A**, the Subcontractor agrees to participate in the Contractor's subcontractor default insurance program ("**SDI**"). SDI shall be for the exclusive benefit of Contractor and shall in no manner inure to the benefit of the Subcontractor. Subcontractor agrees to provide such financial and other qualification information as may be requested by Contractor to determine Subcontractor's eligibility to participate in SDI.

2.4 Licenses

Prior to commencing the Subcontractor's Work but in any event within five (5) working days after the receipt of the Agreement by the Subcontractor, the Subcontractor shall furnish copies of all licenses, including business license or any additional license or registration if required by any governing authority, if any, which are required of the Subcontractor and its sub-subcontractors to complete the Subcontractor's Work.

2.5 Schedule of Values

The Subcontractor shall provide a "**Schedule of Values**" acceptable to the Contractor. The Schedule of Values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and shall be prepared in such detail and form and supported by such data to substantiate its accuracy as the Contractor may require.

2.6 Sub-subcontracts

Upon request of the Contractor, the Subcontractor shall promptly furnish the Contractor, in writing, the name, trade and sub-subcontract amount for each sub-subcontract and purchase order, the names of all persons proposed as manufacturers of the products identified in the project specifications, and copies of all sub-subcontracts, purchase orders, warranties, product information and other relevant information pertaining to sub-subcontractors. The Contractor shall have the right, for reasonable cause, to reject any sub-subcontractor selected by Subcontractor, and Subcontractor agrees to replace such sub-subcontractor with a sub-subcontractor approved by Contractor. In such event the Subcontract Sum and Subcontract Time shall be equitably adjusted.

2.7 Submittals

The Subcontractor shall promptly submit shop drawings, product data, samples, tests, design and performance data, operating and/or maintenance manuals, and similar submittals as required by the Subcontract Documents or as requested by the Contractor and in such sequence as to cause no delay in the Project or in the activities of the Contractor or its other subcontractors. The Subcontractor shall not be relieved of responsibility for deviations from requirements of the Subcontract Documents by the Contractor's review and/or approval of shop drawings, product data, samples or similar submittals unless the Subcontractor has specifically informed the Contractor in writing of such deviation at the time of submittal and the Contractor has given written approval to the specific deviation. The Subcontractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the Contractor's review and/or approval thereof. The Subcontractor is solely responsible for checking the submittals for conformance to the Subcontract Documents.

2.8 Progress Report

Whenever requested by the Contractor, the Subcontractor shall fill out and turn in to the Contractor, on a daily basis, a "**Daily Report**" in a form as furnished by the Contractor. The report shall

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include a date and describe manpower, work locations, deliveries and problem situations. Subcontractor's field Superintendent or Foreman shall report to the Contractor's Project Superintendent prior to commencing its Work on the Project, and report again after absence from the Project to advise the Contractor's Project Superintendent of the particular phase of Work Subcontractor is about to perform. Subcontractor shall complete Contractor's daily report forms at the end of each workday.

2.9 Record Drawings

The Subcontractor shall maintain and promptly provide timely updates to the as-built and record Drawings as required by the Subcontract Documents or as requested by the Contractor.

2.10 Closeout

The Subcontractor shall promptly provide operating, maintenance, and/or warranty manuals, record Drawings, and Owner orientation and operation instructions and current insurance certificate as required by the Subcontract Documents or as requested by the Contractor.

2.11 Miscellaneous

Subcontractor shall also promptly provide additional information and items as requested by Contractor, including off-site stored materials documents as described in Section 3.2, lien releases or waivers and other evidence of payment as described in Section 3.5, cost estimates as described in Section 5.8, coordination drawings as described in Section 8.1, and material safety data sheets as described in Section 0.5.17.

Section 3. Subcontract Sum and Payments.

3.1 Subcontract Sum

Subject to the provisions of the Subcontract Documents, the Contractor shall pay the Subcontractor the Subcontract Sum in current funds for proper and timely performance of the Subcontractor's Work. Payment to the Subcontractor by the Contractor shall not constitute acceptance of the Subcontractor's Work. Except as otherwise provided herein, payments shall be made to Subcontractor upon the earlier of (i) seven (7) working days after the date Contractor receives payment from the Owner unless a shorter period is mandated by applicable state prompt payment law or (ii) thirty (30) days after Contractor has approved Subcontractor's application for payment.

3.2 Progress Payments.

3.2.1 Based upon Subcontractor's applications for payment submitted to the Contractor on Contractor-approved forms, corresponding to applications for payment submitted by the Contractor to the Owner and/or Architect and to certificates for payment issued by the Owner and/or Architect, the Contractor shall make progress payments to the Subcontractor on account of the Subcontract Sum, as provided herein.

3.2.2 Provided Subcontractor's application for payment is received by the Contractor not later than the 20th of the month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor submits to the Owner and/or Architect. If the Subcontractor's application for payment is received after such date, the Subcontractor's Work covered by it shall be included by the Contractor in the following month's application for payment that the Contractor submits to the Owner and/or Architect.

3.2.3 Each Subcontractor's application for payment shall be based upon the most current Contractor-approved Schedule of Values, and shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the Subcontractor's application for payment.

3.2.4 The amount of each progress payment shall be computed by determining that portion of the Subcontract Sum properly allocable to Subcontractor's Work which has been properly and timely completed, as determined by multiplying the percentage completion of each such portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the most current Contractor-approved Schedule of Values, less 10% retainage, or as allowed by law. If allowed by the Prime Contract, there shall then be added that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the Project site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved in advance by the Owner, suitably stored off the Project site at an agreed location, less any retention amount. "Suitably stored" means that the materials will be separated from other inventory and clearly marked to identify such materials as the

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Owner's property, will be identified as necessary for proper insurance coverage's to be paid by Subcontractor, will be evidenced by a clean bill of sale delivered to the Contractor, and will satisfy any other requirements of Owner, Owner's lender, or Contractor. There shall then be subtracted the aggregate of previous payments made by the Contractor and any other amounts to be properly deducted from or offset or backcharged against such progress payment, as permitted under the Subcontract Documents.

3.2.5 Before Subcontractor starts Work on site and receives payment, the following items must be received by the Contractor: Signed Subcontract Agreement, complete and correct insurance certificates, performance and payment bonds, if required, SDI eligibility information, detailed Schedule of Values breakdown acceptable to the Contractor, Federal Tax Identification number, Contractor's state license number and any business license or registration required by the governing municipality.

3.2.6 Failure to timely provide required insurance certificates, bonds or financial and other qualification information, licenses, Schedule of Values, sub-subcontractor information, submittals, progress reports, record Drawings, closeout items, or other information and items specified in **Section 2** will be grounds for the Contractor to suspend any or all progress or final payments, without interest, until the required items are so provided.

3.3 Punch List Work

In addition to retainage, Contractor may withhold at least two times the value (as determined by Contractor) of incomplete or punch list work on any pay application until the specified work is completed. The punch list work shall be completed no later than seven (7) calendar days from the date written notice is presented to the Subcontractor. Thereafter, Contractor may complete the punch list work at the Subcontractor's expense without further notice.

3.4 Final Payment

Final payment, constituting the entire unpaid balance of the Subcontract Sum, including retainage, if any, shall be made by the Contractor to the Subcontractor following request therefore upon the earlier of (i) seven (7) working days after the date Contractor receives payment from the Owner unless a shorter period is mandated by applicable state prompt payment law or (ii) thirty (30) days after Contractor has approved Subcontractor's application for

payment, but only when the Subcontractor's Work is fully, properly and timely performed in strict compliance with the requirements of the Subcontract Documents (including completion of all closeout obligations as set forth in **Section 2.10**) Acceptance of final payment by the Subcontractor shall constitute a waiver and release of any and all Claims by the Subcontractor against the Contractor, Owner, or Architect, except for Claims reserved in writing at such time.

3.5 Lien Releases

Prior to payment, the Subcontractor shall submit construction lien releases or waivers on Contractor-supplied forms as a condition to receiving payment. Upon Contractor's request the Subcontractor shall provide such further evidence satisfactory to the Contractor that all sub-subcontractors and all payrolls, taxes, bills for materials, equipment, supplies, other items and all other indebtedness connected with the Subcontractor's Work and included on the prior and current applications for payment, have been (or will be from the current payment) satisfied. Sub-subcontractor's lien releases or waivers on Contractor-approved forms shall also be provided upon Contractor's request.

3.6 Deductions

The Contractor shall be allowed to deduct from any payments otherwise to be made to Subcontractor hereunder, any amounts to the extent necessary to protect the Owner or Contractor from loss because of: (i) defective or nonconforming Subcontractor's Work; (ii) failure of Subcontractor to pay sub-subcontractors or others; (iii) damage or Claims for which the Subcontractor is responsible and as to which Contractor has provided Subcontractor with prior written notice and a reasonable opportunity (not exceeding five (5) working days) to cure; (iv) an anticipated failure to complete the Subcontractor's Work within the Subcontract Time or Subcontract Sum; and/or (v) any amount due Contractor from Subcontractor under any other agreements between the parties. When the condition justifying the deduction no longer exists, Contractor shall pay to Subcontractor any amount then due which has been previously deducted.

3.7 Owner Payment

Subcontractor acknowledges and agrees that Contractor's receipt of payments from the Owner pertaining to the Subcontractor's Work is an express condition precedent to Contractor's payment obligations hereunder **being recourse to Contractor**. Except to the extent of such Owner payments made

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to Contractor pertaining to the Subcontractor's Work, Contractor's payment obligations to Subcontractor are nonrecourse to any assets of Contractor, and Subcontractor agrees to look solely to the credit abilities of the Owner, and not of the Contractor, for payments hereunder. This clause does not alter whether payment is owed to the Subcontractor, does not alter when payment is due to the Subcontractor, and does not waive Subcontractor's right to file a lien where such right otherwise exists.

3.8 Payments to Sub-subcontractors

The Subcontractor shall timely pay for materials, equipment, supplies, services, labor and other items used in connection with its performance under the Agreement. The Contractor shall be entitled to make payments, directly or by joint check, to sub-subcontractors or others to whom Subcontractor has incurred obligations in connection with its performance under the Agreement, if Contractor determines the circumstances reasonably support such payments. Such payments shall have the same effect as payments made directly to Subcontractor under the Agreement. Contractor shall notify Subcontractor of such payments.

3.9 Use of Payments

The Subcontractor covenants and agrees that all funds received for the performance of Subcontractor's Work pursuant to the Agreement shall first be used solely for the benefits of persons or firms supplying labor, materials, supplies, tools, machines, equipment or services to or for the Project.

3.10 Right to Stop Work for Nonpayment

Except as otherwise required by applicable law or the Prime Contract, if the Contractor does not pay the Subcontractor the amount then owed (after deduction, offsets, backcharges and retainage) within (i) seven (7) working days after the date Contractor receives payment from the Owner or (ii) if Contractor does not receive payment from the Owner, within thirty (30) days after Contractor approves Subcontractor's application for payment, then the Subcontractor may, upon fifteen (15) additional days' written notice to Contractor (unless the Prime Contract specifies additional notice requirements), stop the Subcontractor's Work until payment of the amount then owed has been received (and Subcontractor shall immediately recommence performance of the Subcontractor's Work upon receipt of payment of the amount owed). Notwithstanding, the Subcontractor must also strictly comply with the notice requirements of any

applicable law and the Prime Contract before stopping.

3.11 Taxes Identified

Subcontractor shall separately identify any sales, use, consumer, local option or other taxes payable in connection with the Subcontractor's Work.

Section 4. Insurance.

4.1 Insurance

Without limiting its liability under the Subcontract Documents, Subcontractor shall meet and maintain the insurance coverage required by the Prime Contract; or, if the insurance requirements under this section are more extensive, Subcontractor shall provide and maintain the following minimum insurance. The listed limits can be met by primary and umbrella or "following form" excess liability policies.

4.1.1 Worker's Compensation/Employer's Liability

For all of Subcontractor's direct, temporary or leased employees, Subcontractor will provide the following coverage: worker's compensation - Statutory, and Employer's Liability with limits of \$500,000 each accident, \$500,000 disease policy limit and \$500,000 disease each employee. **Waiver of subrogation in favor of Owner and Contractor is required, if allowed by the law of the state where the Project is located.** Subcontractor shall require this same coverage and limits from its sub-subcontractors.

4.1.2 Commercial General Liability

Coverage shall include: Premises-Operations (including no exclusions for Explosion, Collapse and Underground), Products/Completed Operations, Independent Contractors, Broad Form Contractual Liability, and Personal and Advertising Injury, with at least the following limits: \$2,000,000 Each Occurrence, \$2,000,000 Personal and Advertising Injury, \$2,000,000 Products/Completed Operations Aggregate and \$2,000,000 General Aggregate on a **PER PROJECT** basis.

This insurance shall not exclude coverage for subsidence, exterior insulation and finish systems (EIFS) or residential work. Subcontractor shall continue this coverage for the statute of repose period. For work as a crane or rigging operator or work that will involve hoisting or moving property of others, Subcontractor must have the 'care, custody and control' exclusion deleted from its primary

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commercial general and umbrella or “following form” excess liability (if applicable) policies, or provide riggers’ liability coverage at least equal to the highest value of property to be hoisted or moved.

4.1.3 Automobile Liability

Subcontractor’s business automobile insurance shall at least cover the following automobiles: Owned, Hired and Non-Owned. Its Bodily Injury and Property Damage Combined Single Limit shall be at least \$1,000,000 per Accident.

4.2 Additional Requirements

Under its primary commercial general liability and automobile liability, Subcontractor will secure additional insured status for Contractor, Owner and all other parties required by the Prime Contract. For commercial general liability, use the following ISO additional insured endorsements: CG 20 10 07 04 and CG 20 37 07 04 or equivalent. If umbrella or “following form” excess liability policies are needed to meet the required limits, these same parties shall have the same status and coverage as afforded by these endorsements. Notwithstanding anything to the contrary in any of the Subcontract Documents or these policies, these policies shall be **PRIMARY** and **NON-CONTRIBUTORY** to any applicable insurance that the additional insureds may have and written on an OCCURRENCE basis. These policies will also include a severability of interest clause. The policies of insurance shall provide for at least thirty (30) days’ firm written notice in the event of cancellation. Intent to notify is not acceptable.

4.3 [Intentionally Omitted]

4.4 Certificates

The Subcontractor shall provide certificates of insurance and endorsements evidencing compliance with these requirements. During the term of the Agreement and during the period of any required continuing coverages, the Subcontractor shall provide, prior to expiration of the policies, certificates evidencing renewal insurance coverages as described in this **Exhibit**. The parties agree that the failure of Contractor to object to the form of certificate and/or additional insured endorsement provided shall not constitute a waiver by Contractor of the requirements of **Section 4**.

4.5 Builder’s Risk Insurance

Owner or Contractor shall purchase and maintain property insurance upon the entire work at the site as provided in the Prime Contract. Except to the extent recoverable by Contractor from another subcontractor or Owner, all deductibles attributable to any damage caused by Subcontractor shall be the responsibility of the Subcontractor. A copy of the builder’s risk insurance certificate may be obtained upon request.

4.6 Waiver of Builder’s Risk Insurance Carrier’s Subrogation Rights

To the extent provided in the Prime Contract, the Contractor and Subcontractor waive all rights of recovery that they may have against each other and/or the Owner, Architect, and the officers, agents and employees of any of them, for all claims, damages, injuries and losses, to the extent covered by the property insurance referred to in **Section 4.5**. Such waiver of recovery rights shall be effective for such persons even though such persons would otherwise have a duty of indemnification or contribution, contractual or otherwise, and even though such persons did not pay the insurance premium directly or indirectly, and whether or not such persons had an insurable interest in any property damaged.

4.7 Risk of Loss

Except to the extent covered by the builder’s risk insurance referred to in **Section 4.5**, Subcontractor has the sole responsibility for the proper storage and protection of, and assumes all risk of loss of, Subcontractor’s Work and tools, materials, equipment, supplies, facilities, offices and other property at or off the Project site. Subcontractor agrees not to look to Owner or Contractor for any loss or damage to such items, however caused. The Subcontractor shall take every reasonable precaution in the protection of all structures, streets, sidewalks, materials and work of other subcontractors. Subcontractor shall protect Subcontractor’s Work from damage by the elements or by other trades working in the area.

4.8 Design Insurance

If the Subcontractor’s Work involves design or engineering work, performance specifications or design-build criteria, Subcontractor and/or Subcontractor’s design consultant shall obtain and

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maintain professional liability insurance at limits of at least \$1,000,000 per claim and aggregate, with a retro date prior to or equal to the commencement of Subcontractor's Work. A minimum five (5) years extended reporting provision, commencing from receipt by Contractor of final payment from the Owner, shall be required.

4.9 Aviation (including Drones) and/or Watercraft Liability Insurance

If applicable to Subcontractor's Work, insurance in form satisfactory to the Contractor with limits of at least \$1,000,000 each occurrence shall be provided for Aviation Liability including for use of unmanned aerial system at the Project site by Subcontractor, and/or Watercraft Liability Insurance.

Section 5. Changes in the Work.

5.1 Modifications

No employee or agent of Contractor is authorized to direct any changes in Subcontractor's Work by oral order except in emergency affecting persons or property. Changes to the Subcontractor's Work and to the Agreement may be made only by a written directive or change order to the Agreement ("Modification") signed by the Contractor. The Modification shall be on Contractor-approved forms. The Subcontractor, prior to the commencement of any revisions, shall submit promptly to the Contractor, in writing, a Claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Subcontractor's Work, in a manner consistent with **Sections 5.5 and 5.6** below. If Contractor accepts such Claim, any agreed adjustment to the Subcontract Sum and/or Subcontract Time shall be fully reflected in the Modification. If Contractor does not fully accept such Claim, any adjustment to the Subcontract Sum and/or Subcontract Time shall be reflected in the Modification to the extent not in dispute, and any such adjustments, which are in dispute, shall be reserved by express statement in the Modification. Notwithstanding any such dispute, the Subcontractor shall nonetheless comply with the Modification as directed by the Contractor, and such dispute shall be resolved as provided in **Section 9**.

5.2 Owner Changes

The Owner may make changes in the Subcontractor's Work by issuing amendments, addenda, supplemental instructions, change directives, or

change orders to the Prime Contract. The Contractor shall promptly notify the Subcontractor of any such changes, which affect the Subcontractor's Work. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Subcontractor's Work that would be inconsistent with such changes made to the Prime Contract. Such changes will be promptly evidenced by a Modification to the Agreement, the Subcontract Sum and the Subcontract Time being adjusted in a manner consistent with the corresponding change to the Prime Contract.

5.3 Contractor Changes

The Contractor may make changes in the Subcontractor's Work (whether minor or cardinal) by issuing a Modification, consisting of additions, deletions, reductions in scope, or other revisions, the Subcontract Sum and the Subcontract Time being adjusted pursuant to **Sections 5.5 and 5.6**.

5.4 Subcontractor Changes

The Subcontractor shall make no changes to the Subcontractor's Work except as set forth in a Modification signed by Contractor. The Subcontractor agrees to complete the Subcontractor's Work in strict compliance with the Subcontract Documents. The Subcontractor shall notify the Contractor of any requests for changes within seven (7) calendar days following Subcontractor's discovery of any circumstances permitting a change. Any request made after seven (7) calendar days shall be the responsibility of the Subcontractor, and Subcontractor waives all Claims therefore.

5.5 Adjustments to Subcontract Sum

The Subcontractor agrees that adjustments to the Subcontract Sum as a result of any Modification shall be based on one of the following methods, in the priority listed: (i) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; or (ii) as reasonably determined by the Contractor, based on either (a) unit prices or alternate prices stated in **Exhibit A** of the Agreement; or (b) verified direct costs of the revised Subcontractor's Work, and a fixed amount as overhead and profit determined as a percentage of such net aggregate direct costs in the Modification, in the percentage amount, if any, as set forth in **Exhibit A** of the Agreement; or (c) as provided in the Prime Contract. When both additions and credits related to the Subcontractor's Work are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase or net credit with respect to that change. Time and

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material sheets shall be submitted as requested by Contractor.

5.6 Adjustments to Subcontract Time

Subcontractor shall be entitled to an extension of the Subcontract Time and/or reimbursement for delay damages only to the extent that the Contractor actually receives an extension of time and/or reimbursement for delay damages under the Prime Contract for events pertaining to the Subcontractor's Work. Except to the extent of the foregoing pass-through rights, Subcontractor hereby waives and releases Contractor from any and all Claims for such delay damages including without limitation Claims attributable to breach of contract or tort, and whether caused by Contractor, Owner or other persons for any reason or cause whatsoever, and regardless of whether any such delay or other conduct on the part of the Contractor, Owner or other persons may be deemed unreasonable or was not contemplated by the parties.

5.7 Additional Work

Additional work by the Subcontractor properly authorized by the Contractor and to be funded by the Contractor or its other subcontractors and not funded by the Owner shall be paid at direct field cost with allowance for overhead only in the percentage amount, if any, as set forth in **Exhibit A** of the Agreement, and without any allowance for profit. The Contractor shall have the right to direct Subcontractor to work its personnel and/or its sub-subcontractors personnel overtime and/or in multiple shifts. If Contractor reasonably determines that such overtime or shift work is required to prevent or reduce a delay in the completion of the Subcontractor's Work, all additional costs shall be borne by the Subcontractor. For overtime or shift work performed at the direction of Contractor for which Contractor agrees to pay for the premium cost of such overtime or shift work, the Contractor shall pay the Subcontractor only the actual premium portion of wages plus direct payroll costs applicable to the premium portion with allowance for overhead only in the percentage amount, if any, as set forth in **Exhibit A** of the Agreement, and without any allowance for profit.

5.8 Cost Estimates

In order to aid the Owner in determining whether to implement proposed change orders to the Prime Contract, Subcontractor agrees, at no additional cost, to submit to Contractor firm estimates of changes in

the Subcontract Sum and Subcontract Time which would result from such proposed change orders if implemented, to the extent such proposed change orders would involve changes in the Subcontractor's Work. Subcontractor's failure to respond within seven (7) calendar days will be deemed to be Subcontractor's agreement that such change has no effect on Subcontract Time or Subcontract Sum.

5.9 Backcharges

Subcontractor agrees that at any time a backcharge situation arises against another subcontractor that the backcharge will be resolved between affected subcontractors. If the situation cannot be resolved between subcontractors first, then all affected parties shall meet with the Contractor to determine a mutually acceptable solution.

Section 6. Schedule

6.1 Time of Essence

Time is of the essence in connection with the performance of all obligations of the Subcontractor under the Subcontract Documents.

6.2 Mobilization

Subcontractor shall commence work on the date fixed by a verbal or written notice provided by the Contractor.

6.3 Commencement Condition

Failure to provide the items listed in this Exhibit, **Section 2** will be grounds for the Contractor to prohibit the Subcontractor from commencing or continuing the Subcontractor's Work. Any delays resulting from any such prohibition shall be borne by the Subcontractor and the Subcontract Time shall not be extended and the Subcontract Sum shall not be adjusted on account of such delays.

6.4 Schedule

The Subcontractor shall meet or better the durations established in the Contractor's Schedule and conform to the Contractor's Project Superintendent's interval schedules. Interval schedules shall be used only to coordinate the Work in the field and not to modify the Subcontractor's schedule obligations. The Schedule will be updated periodically to reflect actual job progress. Unless written notification to the contrary is received from the Subcontractor within seven (7) calendar days after issuance, the revised Schedule may become the benchmark for contractually required performance. The Subcontractor shall provide sufficient crews, materials and equipment to maintain or improve upon the Contractor's Schedule. Contractor shall have the right to suspend

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Subcontractor's performance from time to time, or to reschedule or re-sequence the Subcontractor's Work.

6.5 Contractors Stipulated Delay Damages

If the Subcontractor fails to complete the Subcontractor's Work within the agreed time, then the Subcontractor shall pay the Contractor a sum equal to (i) Contractor's per diem cost for general conditions associated with this Project for each and every calendar day following the agreed completion date until actual completion, or (ii), in the alternative, **\$Enter Daily Damages Value** per calendar day, not as a penalty but as stipulated delay damages for such delayed completion, for each and every calendar day following the agreed completion date until actual completion. This amount referenced in the above subsection (ii) is agreed by the parties to be a reasonable estimate of the Contractor's per diem cost of the general conditions associated with this Project. Unless a stipulated dollar amount is inserted in subsection (ii) above, subsection (i) shall apply. Such damages shall be in addition to and not in limitation of any other damages or remedy allowed by law or by the Subcontract Documents.

6.6 Owner's Delay Damages

If the Subcontractor fails to complete the Subcontractor's Work within the agreed time, then the Subcontractor shall pay the Contractor for such delay damages as the Contractor shall be required to pay to the Owner under the Prime Contract, but only to the extent allocable to Subcontractor's delayed completion.

6.7 Clarification Delays

Subcontractor request(s) for information do not justify time extensions. Subcontractor shall plan ahead and ask necessary clarifications in writing prior to the start of Subcontractor's Work in order to avoid delays to the established duration(s).

6.8 Workweek

Subcontractor shall comply with the Contractor's standard project workweek as designated by the Contractor's Project Superintendent. The Subcontractor shall work on Saturdays, Sundays and holidays as make-up days at no additional expense to the Contractor in the event that it is necessary to achieve schedule requirements. Subcontractor shall provide Contractor written notice in advance of request to work on the weekend.

6.9 Project Completion

Overall Project completion date is **Enter Date**.

Section 7. Contractor.

7.1 Site Authority

The Contractor shall be the final authority on all issues pertaining to site use, storage, safety issues, working space, parking, coordination among trades, and all other common area site issues, and Subcontractor agrees to comply with all of Contractor's decisions, rules and directives pertaining thereto.

7.2 Communications

The Contractor shall not give instructions or orders directly to employees or workers of the Subcontractor, except to the person designated as the authorized representative of the Subcontractor. The Subcontractor's representative shall be the Contractor's contact for any matter regarding the Agreement, and shall attend weekly coordination meetings if requested by the Contractor. The Contractor may also give directions regarding scheduling, sequencing, production, quality, and general job safety, clean up, and other field matters to the Subcontractor's representative. The Subcontractor's representative shall be on the site at all times Subcontractor's Work is being performed and shall be the Contractor's sole contact regardless of how many trades or crews the Subcontractor may have on the site. The Subcontractor's authorized representative shall have full authority to commit the Subcontractor to money and schedule.

7.3 Contractor's Services

If additional services are required by the Contractor's staff to assist the Subcontractor in performing its obligations under the Subcontract Documents, the cost of these additional services may be charged to Subcontractor or deducted from any amounts due or to become due to Subcontractor under the Subcontract Documents, or under any other agreement, relationship or transaction between Contractor and Subcontractor. "Additional services" include but are not limited to rechecking Subcontractor's shop drawings and submittals upon second and subsequent submittals; Contractor's staff time, phone expense and travel expense to expedite Subcontractor's materials; Contractor's staff time and consultant costs and attorney's fees to troubleshoot nonconforming or defective Subcontractor's Work; additional accounting and data processing time to issue direct or joint checks to Subcontractor or its sub-subcontractors; Contractor's staff time, phone expense, travel costs, consultant costs and attorney's fees required due to liens, claims or disputes involving Subcontractor or its sub-subcontractors; and

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additional architectural, engineering, construction management, supplemental manpower, or additional similar costs and services charged to the Contractor arising out of or in connection with the Subcontractor's performance under the Subcontract Documents.

Section 8. Subcontractor.

8.1 Coordination

The Subcontractor shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the work of the Project. The Subcontractor shall cooperate with the Contractor and its other subcontractors, the Owner and Owner's other contractors, whose work might interfere with the Subcontractor's Work. If reasonably requested by the Contractor, the Subcontractor shall prepare coordination drawings in areas of congestion, specifically noting and advising the Contractor of potential conflicts between the Subcontractor's Work and the other work of the Project. Even with such cooperative and coordination efforts, should a conflict occur, the Contractor will determine how such conflict should be resolved, and its decision in that regard will be final. The Subcontractor agrees to abide by such decisions and make any changes required to eliminate such conflict without additional cost or expense to the Contractor.

8.2 Laws, Permits, Fees and Notices

The Subcontractor shall give all required notices and comply with all laws, ordinances, rules, regulations, licensing requirements and orders of public authorities bearing on performance of the Subcontractor's Work. Such compliance shall include but not be limited to compliance with all applicable building codes, and whenever applicable the federal Contract Work Hours Standard Act of 1962; the federal Civil Rights Act of 1964, federal Executive Orders 10925; 11114, 11246 (as amended by federal Executive Order 11375) 11625, 11701 and 11758; Americans With Disabilities Act; Fair Housing Act; federal Fair Labor Standards Act; the Immigration Reform and Control Act of 1986 (as amended); Minority Business Enterprise and Women Business Enterprise laws and regulations; state civil rights statutes; and federal and state OSHA laws, environmental laws (including, without limitation, National Pollutant Discharge Elimination System ("NPDES") and Storm Water Pollution Prevention Plan

("SWPPP") permits and regulations required by Federal and State authorities), veteran's status laws, and federal, state and local tax laws social security acts; unemployment compensation acts; workers' or workmen's compensation acts; and state and local immigration laws, rules and regulations; as all such laws, rules and regulations may be amended from time to time. The Subcontractor shall timely submit all necessary reports and information to the appropriate federal, state, and local agencies. The Subcontractor shall not refuse to hire, accept, register, classify or refer for employment, discharge any employee or otherwise discriminate in employment against any employee or applicant because of the age, race, creed, color, sex, national origin or religion of such applicant or employee, or because of the disability of such applicant or employee unless based upon the nature of the occupation. The Subcontractor shall secure and pay for all permits and governmental fees, fines, licenses and inspections necessary for proper execution and completion of the Subcontractor's Work, except to the extent required by law to be obtained or paid by the Contractor, Owner or Architect.

The Subcontractor shall comply with requirements of applicable law pertaining to determining locations of underground facilities, careful and prudent excavation, notice to the utility company in the event of damage, payment of the cost of repairs and payment of civil penalty for violation of the law. The Subcontractor shall pay all fines, penalties, interest, attorney's fees and other costs and expenses arising out of or in connection with Subcontractor's failure to comply with all requirements of the Subcontract Documents. It is the Company's policy not to discriminate against any employee or applicant for employment because of age, race, religion, creed, color, sex, sexual orientation, national origin, and ancestry, disability or veteran status. Additionally, it is our policy to take affirmative action and promote a system which ensures that equal opportunity is the working procedure and end result.

8.3 General Warranties

The Subcontractor warrants to the Owner, Architect and Contractor that (i) materials and equipment furnished under the Agreement will be of good quality and new unless otherwise required or permitted by the Subcontract Documents, (ii) the

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Subcontractor's Work will be free from defects and will strictly comply with the requirements of the Subcontract Documents, (iii) no asbestos, polychlorinated biphenyl (PCB) or other known hazardous or toxic substance will be used in connection with or incorporated into the Subcontractor's Work in violation of the Subcontract Documents, (iv) the Subcontractor's Work will at all times be free of all claims and liens, and (v) Subcontractor and its sub-subcontractors hold all required licenses to permit it to fully perform all of Subcontractor's Work. Subcontractor's Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. These warranties shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Documents. The Subcontractor agrees that the Contractor has the authority to reject any of the Subcontractor's Work which is defective or which is rejected by the Architect or Owner. Subcontractor shall provide written certificates confirming compliance with these warranties upon request of the Contractor. Liens of Subcontractor or its sub-subcontractors shall be removed or bonded over within five (5) working days of Contractor's request therefore to the extent Subcontractor has received payment therefore or payment is not due under the Agreement. In any event, upon written request of Contractor to release the lien, the Subcontractor shall voluntarily release its lien within five (5) days. The form and method to release the lien shall be in accordance with state law. Upon confirmation of the effectiveness of such release of lien, Contractor shall provide Subcontractor with substitute security for such stated lien amount by delivery of a conditional payment bond for such amount or by deposit of such amount into a cash escrow as Contractor may elect, or as otherwise agreed to by Contractor and Subcontractor.

8.4 Indemnity

To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Contractor, Owner, and their agents, consultants, assigns, employees, insurers, sureties, affiliates, shareholders and members, from and against all claims, damages, losses, expenses including but not limited to attorneys' fees, property damage, bodily injury, and loss of use, but only to the extent caused by Subcontractor's (a) performance of its Work, (b) breach of any provisions of the Subcontract Documents, (d) violation of law or regulation, or (e)

negligent act or omission or the negligent act or omission of Subcontractor's sub-subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts or omissions any of them is liable or responsible. This obligation is not intended to require indemnification of a party for a claim that is finally determined to be caused by the negligence of that indemnified party. However, this obligation is intended to require Subcontractor to defend, indemnify and hold harmless an indemnified party even if that indemnified party also contributed to the claim, loss, damage or expense through its own active negligence, but only to the extent caused by Subcontractor or those for whom Subcontractor is liable or responsible. This obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist for a party or person described in this section. In claims against any person or entity indemnified under this section by an employee of the Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts or omissions Subcontractor may be responsible, the indemnification obligation under this section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable under workers' or workmen's compensation acts.

8.5 Correction Obligation

The Subcontractor agrees to correct, at its cost, any of Subcontractor's Work which is defective and which is rejected by the Contractor, Architect or Owner, for the longer of (i) the period that the Contractor is obligated to correct the Subcontractor's Work under the Prime Contract, or (ii) a period of one (1) year or longer if required by the Prime Contract, Subcontract or local laws from the date of final acceptance of the entire Project by the Owner. Subcontractor's correction obligation shall not limit or modify the time within which the Subcontractor's obligations to strictly comply with the Subcontract Documents (including its warranty to provide non-defective Work) may be sought to be enforced nor the time within which proceedings may be commenced to establish the Subcontractor's liability with respect to the Subcontractor's obligations under the Subcontract Documents (including its warranty to provide non-defective Work).

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8.6 Subcontractor's Materials, Tools and Equipment

The Subcontractor hereby grants the Contractor a lien upon all materials, tools and equipment of the Subcontractor at the Project site or to be used in connection with the Subcontractor's Work, as security for the satisfactory performance and completion of the Subcontractor's Work required hereunder and for payment of all other outstanding obligations of the Subcontractor under this Agreement.

8.7 Maintenance

The Subcontractor shall be responsible for any periodic maintenance of the Subcontractor's Work as required for the operation of the Project during construction of the entire Project. All such costs are included in the Subcontract Sum.

8.8 Deliveries

Subcontractor agrees that all deliveries to the job site of Subcontractor's materials and equipment and all unloading, handling, hoisting and storage of such items shall be scheduled at the direction of the Contractor. Subcontractor shall provide Contractor with at least 24-hour prior notice. Subcontractor shall take particular care to locate and store all heavy material and equipment on floor areas in a manner acceptable to the Structural Engineer, Architect and Contractor. Subcontractor shall not restrict the flow of traffic into or around the Project site. At the direction of the Contractor, Subcontractor shall relocate improperly stored materials at Subcontractor's expense.

8.9 Traffic Control

Subcontractor shall provide all traffic control, barricades, flagmen, temporary ramps and similar measures if required or requested by the Contractor for material deliveries or completion of the Subcontractor's Work.

8.10 Design-Build Work

If the Subcontractor's Work involves design work, performance specifications or design-build criteria, such design portion of the Subcontractor's Work shall be performed by qualified, licensed (if required) design personnel. The Subcontractor assumes all design liability and responsibility for such design portion of the Subcontractor's Work and shall defend, indemnify and hold Contractor and Owner harmless therefrom, however caused.

8.11 Job-Site Waivers

Subcontractor shall defend, indemnify and hold Contractor, Owner and Architect harmless from all

damages, costs, expenses including attorneys' fees, and personal injuries incurred by Subcontractor's visitors to the job site. Such visitors may be required to sign Contractor-approved waivers and releases.

8.12 Signage

All signage or other graphics must be approved by Contractor prior to application on equipment, temporary buildings, trailers, and/or other Project structure. The Subcontractor shall immediately remove any signage or graphics at Subcontractor's cost upon request of Contractor.

8.13 Royalties

The Subcontractor shall pay for all royalties and license fees, and agrees to defend all suits or claims for infringement of any patent rights involved in the Subcontractor's Work and to defend, indemnify and hold Contractor and Owner harmless from and against any loss, cost or expense including attorney's fees arising out of or in connection with any such infringement.

8.14 Dust Control

Subcontractor shall be responsible for dust control during the performance of its Work in accordance with federal, state and county guidelines and as required by the Contractor, Architect and/or Owner or Prime Contract. Subcontractor shall keep public streets free of mud/debris from Subcontractor's own vehicles

8.15 Protection of Concrete Slabs

The Subcontractor recognizes that the concrete slab is the finished floor product in parts of the Project and that it may not receive floor covering. The Subcontractor agrees to take all precautions and provide all protection necessary to ensure that the concrete floor will not be marked, spotted, stained or damaged in any way from Subcontractor's operations. This includes drop cloths to protect the surface from paint, drywall compound, etc; diapering of engines, differentials, transmissions and other equipment and machinery components with the potential to leak oils and fluids; boots on rubber-tired equipment if tires are leaving marks on the floor; and prohibiting the use of layout marking material that will permanently mark the slab.

8.16 Protection of Materials and Equipment

Subcontractor shall protect all material and equipment, which has not yet been incorporated into the Project. Where installed materials or equipment is subject to weather damage, Subcontractor shall provide protection until the Project is sufficiently complete to avoid damage.

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8.17 Subcontractor Personnel

The Sub-contractor shall provide a representative, superintendent(s) and/or foremen approved by Contractor. The Subcontractor may replace such approved personnel only with Contractor approved substitute personnel. The Subcontractor shall remove and replace its personnel if so requested by Contractor for reasonable cause.

8.18 Drinking Water

Subcontractor shall provide drinking water, cups and ice for its employees.

8.19 Jobsite Meetings

Subcontractor's representative shall attend one pre-construction jobsite meeting and any additional meetings as required by the Contractor's Project Superintendent and as required in Section 9. Subcontractor shall present current and future needs, including interface requirements, time, sequences, deliveries, access, site utilization, etc.

8.20 Quality Control and Zero Defects Program

Subcontractor acknowledges and agrees to actively participate in the Contractor's Quality Control Program, including the Zero Defects Program (ZDP). Subcontractor shall participate in preconstruction meetings and pre-installation conferences. Subcontractor shall designate a responsible person with full authority to make manpower and schedule commitments as Subcontractor's Quality Control representative. Subcontractor's Quality Control representative shall participate in periodic inspections, including but not limited to First Work QC inspections of their own work. Subcontractor shall be responsible for correction of defective or nonconforming work under the terms of the Agreement. Upon request of the Contractor, the Subcontractor shall promptly furnish written verification that materials delivered to the jobsite conform to the approved submittals and contract documents.

Section 9. Claims and Dispute Resolution.

9.1 Claims Resolution by Agreement

The Subcontractor agrees to be conclusively bound by the Contractor's decisions on all matters, unless the Subcontractor disputes such decision in writing within seven (7) calendar days following receipt of Contractor's decision. In the event of any dispute,

controversy or claim ("Claim") between the Contractor and Subcontractor arising out of or related to the Subcontract Documents or the breach thereof, each party shall promptly notify the other upon discovery of any Claim, and shall in good faith meet to resolve the Claim by mutual agreement. The parties will endeavor to meet within five (5) working days following receipt of written notice from the party requesting such a Claims meeting. Such notice shall provide full notice of all Claims to be discussed at the meeting, together with substantiating documentation. The Subcontractor agrees to continue performing all of Subcontractor's Work notwithstanding the existence of any Claims or the pending resolution thereof.

9.2 Claims Resolution by Arbitration

Any Claim not resolved under Section 9.1 shall, at the option of the Contractor, be determined by arbitration in accordance with the Federal Arbitration Act. The arbitrator shall address all then pending and unresolved Claims. Notwithstanding the foregoing, each party shall be required to submit a proposed resolution of each of such Claims to the arbitrator, and the arbitrator will be required to render a decision adopting, in full, one or the other of such proposed resolutions, on a per Claim basis, and no compromises or alternative resolutions shall be allowed or considered by the arbitrator without the mutual consent of both Contractor and Subcontractor. The Contractor and Subcontractor shall mutually select an independent arbitrator within five (5) working days following notice of intent to arbitrate delivered by Contractor to Subcontractor. The parties shall use best efforts in good faith to conclude the arbitration as soon as possible following the selection of an arbitrator. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. General costs of arbitration, including arbitrator fees and hearing costs, shall be assessed against the losing party.

9.3 Claims Resolution by Alternative Methods

If Contractor has not elected to arbitrate the Claims, then all requirements and conditions, including conditions precedent, pertaining to arbitration shall be deemed appropriately adjusted to permit (i) Contractor to pursue such Claims at any time as otherwise permitted or required by the Subcontract Documents or by law or equity, and (ii) Subcontractor to pursue all Claims through a single litigation at any time after substantial completion of the Project and prior to the expiration of one year following such substantial completion. Subcontractor waives all

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rights to otherwise pursue such Claims and agrees to immediately dismiss or stay any litigation (including a lien foreclosure action) filed in contravention of this waiver.

9.4 Joinder

The Contractor shall give the Subcontractor prompt written notice of any demand received or made by the Contractor for mediation, arbitration, or other dispute resolution process with the Owner if the dispute involves or relates to the Subcontractor's Work. The Subcontractor hereby consents to inclusion in the Owner-Contractor dispute resolution proceeding whether by joinder, consolidation or otherwise, upon such request by Contractor, and agrees to be bound by such dispute resolution process to the same extent Contractor is bound thereby.

9.5 Pass-Through Claims

A Claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made by the Subcontractor in sufficient time and in such manner as to permit the Contractor to satisfy the requirements of the Prime Contract. Such Claims shall be received by the Contractor not less than five (5) working days preceding the time by which the Contractor's claim under the Prime Contract must be made. Failure of the Subcontractor to make such a timely Claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound. Notwithstanding anything in the Subcontract Documents to the contrary, to the extent a Claim is ultimately a claim against the Owner or the Architect, the Subcontractor agrees that the Contractor shall be liable to the Subcontractor only to the extent that the Contractor actually recovers damages or receives time extensions or additional costs from the Owner pertaining to such Subcontractor's Claims.

9.6 Other Remedies

Section 9 shall not be deemed a limitation of rights or remedies which the parties may have under state mechanics' lien laws, public contract claims laws or under applicable performance bonds or payment bonds.

Section 10. Contractor's Termination Rights.

10.1 Subcontractor's Default

If the Subcontractor fails or neglects to carry out the Subcontractor's Work in strict compliance with the Subcontract Documents or is otherwise in default of

any of its obligations under the Subcontract Documents, and fails to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, after 48 hours following delivery to the Subcontractor of written notice thereof and without prejudice to any other remedy the Contractor may have, (i) supplement the Subcontractor's performance with additional material, supplies, equipment or labor, pay for same and deduct the amount so paid from any money then or thereafter due Subcontractor (if such offset is not sufficient, Subcontractor shall pay any deficiency promptly upon demand), or (ii) terminate the Subcontractor's continuing performance under the Agreement. Termination of performance may be immediate (without prior notice) in the event of conditions hazardous to persons or property. Such termination of performance shall be deemed to be for cause, and **Section 10.4** shall apply thereto.

10.2 Bankruptcy, Etc.

It is recognized that if Subcontractor institutes or has instituted against it a case under Title 11 of the United States Code (Bankruptcy Code), or if it dissolves, dies or otherwise ceases to exist, or if it becomes insolvent or unable to pay its debts as they become due, such events could impair or frustrate Subcontractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Contractor shall be entitled to make a written request of Subcontractor or its successor or surety, if any, to provide adequate assurances of future performance. Failure to comply with such Contractor's request with 48 hours of delivery of the written request shall entitle Contractor, in addition to any other rights and remedies provided by this Agreement or by law or equity, to (i) supplement the Subcontractor's performance with additional material, supplies, equipment or labor, pay for same and deduct the amount so paid from any money then or thereafter due Subcontractor (if such offset is not sufficient, Subcontractor shall pay any deficiency promptly upon demand), or (ii) terminate Subcontractor's continuing performance under the Agreement. Such termination of performance shall be deemed to be for cause, and **Section 10.4** shall apply thereto.

10.3 Labor Relations

The Subcontractor shall fully abide by all labor agreements and jurisdictional agreements and decisions presently in force or subsequently executed with or by the Subcontractor. However, should there be a work stoppage, slowdown or any type of interference with the performance of Subcontractor's Work resulting from any labor dispute involving

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Subcontractor's employees, agents or sub-subcontractors, which in the reasonable judgment of the Contractor will cause, or threatens to cause, any delay in the progress of the Subcontractor's Work, then upon 48 hours' written notice, the Contractor shall have the right to (i) supplement the Subcontractor's performance with additional material, supplies, equipment or labor, pay for same and deduct the amount so paid from any money then or thereafter due Subcontractor (if such offset is not sufficient, Subcontractor shall pay any deficiency promptly upon demand), or (ii) terminate the Subcontractor's continuing performance under the Agreement. Such termination of performance shall be deemed to be for cause, and **Section 10.4** shall apply thereto.

10.4 Consequences of Termination for Cause

Upon a termination of Subcontractor's continuing performance under the Agreement for cause, the Contractor may, without limitation of any other available remedies, proceed as follows: (i) direct the Subcontractor to immediately leave the site, but to give possession of all materials and supplies at the site or stored off-site, to the Contractor for use in completing the Subcontractor's Work; in the event of such a directive to leave the site, the Subcontractor agrees to do so immediately, even if it disputes the grounds for the directive; the Contractor shall also provide or cause to be provided such other materials, supplies, tools, equipment, machinery, labor, services and other items as may be necessary to complete the Subcontractor's Work; or (ii) by registered or certified mail addressed to the Subcontractor's surety, if any, require the surety to provide such materials, supplies, tools, equipment, machinery, labor, services and other items as may be necessary to complete the Subcontractor's Work in strict compliance with the Subcontract Documents. The Contractor shall apply any unpaid balance of the Subcontract Sum to pay for such completion costs; provided, that the Contractor may first require the Subcontractor or its surety, if any, to fund any anticipated excess completion costs. In all such events, if the unpaid balance of the Subcontract Sum exceeds the costs of completing the Subcontractor's Work together with interest on such costs and together with any offsets and deductions available to the Contractor, such excess shall be paid to the Subcontractor. However, if such costs, interest, deductions and offsets exceed such unpaid balance, the Subcontractor or Subcontractor's surety shall pay the difference to the Contractor upon demand.

10.5 Convenience

The Contractor may terminate the Agreement at any time for the convenience of the Contractor (i.e., without cause), upon written notice thereof to Subcontractor. In such event, the Subcontractor shall be entitled to pro-rata payment of the Subcontract Sum for Subcontractor's Work properly and timely performed and for proven loss with respect to unused materials, equipment, machinery and tools, to the extent recovered by the Contractor from the Owner. If Contractor is found to have improperly terminated Subcontractor's continuing performance under **Sections 10.1, 10.2, or 10.3**, it shall be deemed to have elected to terminate the Agreement for convenience under this **Section 10.5**.

10.6 Contract Terms Control

In no event shall the Contractor be obligated to pay Subcontractor any anticipatory profit or indirect, special or consequential damages, however caused, and Subcontractor hereby waives all such Claims. Without limiting the generality of the foregoing, the Subcontractor specifically agrees that it shall not be entitled to assert, and it hereby expressly releases and waives, any Claims in quantum meruit, or in negligence, or for interest on late payments, punitive damages, financing costs or penalties, lost profits, lost opportunities, damaged reputation, or any other measure of damages other than the limited breach of contract damages as specifically provided in **Sections 10.4 and 10.5** above.

Section 11. Miscellaneous Provisions.

11.1 Attorney's Fees

In the event it shall become necessary for either party to institute legal proceedings against the other party for recovery of any amounts due and owing under the Agreement, it is expressly agreed that the prevailing party in any such action shall be entitled to recover from the non-prevailing party all costs, including reasonable attorney's fees, of pre-suit collection attempts, suit, and post judgment or settlement collection including those incurred on appeal.

11.2 Assignment

The Contractor may assign the Agreement to the Owner and Owner's lenders, subject to the provisions of the Prime Contract and to the prior rights of the surety obligated under Contractor's bonds, if any, provided under the Prime Contract. The Subcontractor agrees not to assign or sublet the Agreement or any part thereof and not to assign any money due or to become due under the Subcontract Documents without first obtaining the written

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consent of the Contractor, which consent may be withheld in Contractor's sole discretion.

11.3 Construction

This Agreement shall not, as a matter of judicial construction, be construed more severely against one of the parties than the other.

11.4 Entire Agreement

The Subcontract Documents represent the entire and integrated agreement between the Contractor and Subcontractor and supersede prior negotiations, representations or agreements, either written or oral. Except as provided in **Section 10.2**, the Subcontract Documents shall be governed by the laws of the state in which the Project is located.

11.5 Successors

The Contractor and the Subcontractor, for themselves, their successors, executors, administrators and assigns, hereby agree to the full performance of the covenants of the Subcontract Documents.

11.6 Definitions

For purposes of this Subcontract Agreement, "delay damages" means any damages incurred or sustained by Subcontractor due to changes in the Subcontractor's Work (whether such changes are actual, constructive, additive, deductive, cardinal, major or minor and regardless of the frequency or number thereof), or to acceleration or suspension of the Subcontractor's Work (either actual or constructive), or to extension of the completion date of the Subcontractor's Work, or to enlargement of the Subcontractor's Work (whether due to any changes, acceleration, suspension, delay, hindrance, disruption, interruption, or interference in, with or of the Subcontractor's Work or otherwise); and "damages" means any additional or extended costs, expenses, general conditions or overhead (either Project site or home office), lost profits, inefficiency claims, or any other loss or damages whatsoever; "prevailing party" means that party who is awarded a sum equal to at least 75% of the amount demanded by such prevailing party in writing prior to commencement of the arbitration or trial or is assessed a sum equal to less than 75% of the amount demanded by the non-prevailing party in writing prior to commencement of the arbitration or trial.

11.7 Survival

All covenants, agreements, indemnities, guarantees and warranties made by Subcontractor shall survive completion of the Subcontractor's Work and the performance or termination of the Agreement and

any payment of the Subcontract Sum in whole or in part.

11.8 Severability

If any term or provision of the Agreement shall be held to any extent to be invalid or unenforceable, the remaining terms and provisions shall remain valid and be enforceable to the fullest extent permitted by law.

11.9 Captions/Counterparts

Section headings are for convenience only and shall not modify or restrict any of the terms or provisions hereof. This Agreement may be executed in counterparts and by facsimile or electronic signature, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

11.10 Records

Contractor, upon reasonable notice to Subcontractor, shall have the right to examine the books and records of Subcontractor, and Subcontractor agrees to make such books and records available to Contractor at a place mutually agreeable to Contractor and Subcontractor.

11.11 National Labor Relations Act

To the extent required by law, during the term of this Subcontract, the Contractor and Subcontractor agree to post a notice, of such size and in such form, and containing such content as the Secretary of Labor shall prescribe, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically. The notice shall comply with federal law, regulations, and EO 13496. The notice shall particularly comply with 29 CFR part 471, appendix A to subpart A, which is incorporated herein by reference.

11.12 Jury Trial Waiver

Notwithstanding any term or condition to the contrary, each party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal action, proceeding, cause of action or counterclaim arising out of or relating to this agreement, including any exhibits, schedules, and appendices attached to this agreement, or the transactions contemplated hereby. Further, each party certifies and acknowledges that (a) no representative of the other party has represented, expressly or otherwise, that the other party would not seek to enforce the

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foregoing waiver in the event of a legal action, (b) it has considered the implications of this waiver, (c) it makes this waiver knowingly and voluntarily, and (d) it has decided to enter into this agreement in consideration of, among other things, the mutual waivers and certifications in this section.