



Master Contract

Between Contractor: Nabholz Construction Corporation
Insert Division
City, State, Zip Code

and Subcontractor: Subcontractor Name
Address
City, State, ZipCode
Email

This MASTER CONTRACT is made as of **Master Contract Date** between **Subcontractor**, ("**Subcontractor**") and Nabholz Construction Corporation ("**Contractor**"), and both parties agree to the following terms:

ARTICLE 1. CONTRACT DOCUMENTS.

§ 1.1 This Contract shall govern the rights of the parties hereto and shall be supplemented by executing a separate project contract for each project the Subcontractor is engaged by Contractor to perform (hereafter defined as "**Project Contract**") and collectively as "**Contract**" or "**this Subcontract**"). This Contract is not a guarantee that Subcontractor will receive future work from Contractor. This Contract and each Project Contract or work order for a particular project shall together be considered one contract for that project, which is separate, apart, and independent of any Project Contract for another project.

§ 1.2 The contract documents consist of (1) this Contract; (2) the Project Contract; (3) the Prime Contract, consisting of the Agreement between the Owner¹ and Contractor, and the other Contract Documents enumerated in the Prime Contract; (4) any modifications, amendments, or change orders to the Prime Contract whether issued before or after execution of this Contract; (5) Contract Documents enumerated in the Project Contract; and (6) modifications, amendments, or change orders to this Contract or the Project Contract executed by the Contractor (collectively, "**Contract Documents**"). These form the Contract and are as fully a part of the Contract as if attached to this Contract or repeated herein. The Contract Documents (except for proprietary and financial terms) will be made available for inspection by Subcontractor at a reasonable time upon written request of Subcontractor.

§ 1.3 Subcontractor agrees to furnish all material and perform all work as described on each Project Contract in accordance with the Contract Documents. In the event of a conflict between this Contract and the Contract Documents, the provision granting greater rights or remedies to Contractor, or imposing the greater duty, standard, responsibility, or obligation on the Subcontractor shall govern. In the event of a conflict between or among amendments, the amendment with the later date shall prevail. The Subcontractor shall require that all of its lower tier subcontractors and suppliers be bound unto Subcontractor in the same manner as Subcontractor is bound unto Contractor. This Contract, however, shall not be construed to create any contractual relationship of any kind between Subcontractor and Owner or between any persons or entities other than Contractor and Subcontractor.

ARTICLE 2. CONTRACT WORK.

§ 2.1 Subcontractor and Contractor agree that the materials, including tools and equipment (hereinafter "**materials**"), and the labor to be furnished and work to be done by Subcontractor (hereinafter "**Work**") will be set forth on a Project Contract supplementing the terms of this Contract for each project Subcontractor is engaged to perform. Any terms of this Contract modified or supplemented by a Project Contract shall apply only to the project described in the Project Contract.

§ 2.2 Any terms, conditions, exclusions, or qualifications contained in proposals, quotations, bid documents, or any other documents prepared by the Subcontractor are null and void and hereby rejected by Nabholz, unless repeated in the related Project Contract or incorporated by a written reference in the related Project Contract signed by Contractor.

§ 2.3 If Subcontractor performs work without a written Project Contract, work order, exclusive use contract or other document, or performs work based on a proposal or bid, the provisions of this Contract will apply.

¹ The term "**Owner**" may also refer to Nabholz' client. For exemplary purposes only, "Owner" may refer to the Project General Contractor when Nabholz contracts directly with the General Contractor as a lower-tier subcontractor.

ARTICLE 3. COMMENCEMENT AND TIME.

§ 3.1 Commencement. The "**Date of Commencement**" is the effective date of each Project Contract, unless otherwise set forth in the Project Contract.

§ 3.2 Term. The term of this Contract shall continue in force indefinitely and so long as a Project Contract exists. Termination of this Contract shall not relieve any party of the obligations hereunder for past performance nor the obligations of any then-existing Project Contract.

§ 3.3 Schedule. In consultation with the Subcontractor, the Contractor shall prepare the schedule for performance of the Project Contract (hereinafter called the "**Schedule of Work**") and shall revise and update the Schedule of Work as necessary as the Work progresses. Both the Contractor and the Subcontractor shall be bound by the Schedule of Work. In agreeing to perform the Work, Subcontractor has considered and made allowances for delays which should be reasonably anticipated or foreseeable, including without limitation delivery delays or supply chain interruptions.

§ 3.3.1 The Schedule of Work and all subsequent changes and additional details thereto shall be submitted to the Subcontractor promptly and reasonably in advance of the required performance. The Contractor shall have the right to determine and, if necessary, change the time, order, and priority in which the various portions of the Work shall be performed and all other matters relative to the timely and orderly conduct of the Work. Subcontractor shall notify Contractor in writing of any objection to the Schedule of Work or subsequent changes as soon as possible but in no event later than forty-eight (48) hours of receipt of such schedule or amendment. The failure of Subcontractor to object to the Schedule of Work or subsequent changes thereto shall constitute a waiver of any claim of Subcontractor based on the Schedule of Work or subsequent changes thereto.

§ 3.3.2 If, in the sole judgement of the Contractor, the Work or project should fall behind schedule, Subcontractor will work overtime, weekends, bring in additional personnel, or provide any other measures necessary to comply with the Schedule of Work. If the Schedule of Work falls behind as a result of Subcontractor's act or failure to act, Subcontractor will take such actions without additional expense to Contractor. If the Schedule of Work falls behind schedule due to no fault of Subcontractor, then Subcontractor may submit its resulting reasonable and documented direct costs in a proposed change order subject to the written approval of Contractor in the time and manner specified by the Contract Documents.

§ 3.4. Supervision and Control. The Subcontractor shall use its best care, skill, and diligence in supervising and directing the Work. The Subcontractor shall have responsibility and control over the performance of the Work, including the construction means, methods, techniques, manner, and sequences for coordinating and completing the various portions of the Work, unless the Project Contract gives other specific instructions concerning these matters.

§ 3.4.1 Subcontractor shall verify its employees' authorization to work in the United States, assure proper completion of I-9 documentation, and require all its sub-subcontractors to complete such verification for their employees. Subcontractor represents that all Work performed under this Contract shall be performed in compliance with all regulations of the Social Security Administration, Department of Homeland Security, United States Citizenship and Immigration Services, or other federal or state agency with jurisdiction, and state and local laws and regulations applicable to Subcontractor's Work. Contractor reserves the right to inspect, and Subcontractor agrees to properly maintain Subcontractor's documentation and verification of all employees' legal status at any time. Subcontractor agrees to indemnify, hold harmless, and defend Contractor and Owner from any losses, claims, damages, fines, penalties, and expenses, including reasonable attorney fees, arising, or resulting from Subcontractor's failure to comply with this section. Subcontractor acknowledges its obligation on publicly funded projects in certain states to provide written certification of Subcontractor's compliance with applicable local, state, and federal laws. Subcontractor shall employ due diligence to ensure it complies with all applicable laws and regulations.

§ 3.4.2 Subcontractor shall not employ any sub-subcontractor, of any tier, if Subcontractor knows or has reason to believe such sub-subcontractor employs individuals not properly authorized to work. Subcontractor understands and agrees that, in the event Subcontractor provides or permits provision of (directly or indirectly) labor, services, or materials to the project by unauthorized workers, Subcontractor will be removed from the project site, and Subcontractor may be deemed in default of this Contract on the project at issue as well as any other project.

§ 3.4.3 In the event of a government inspection or audit, Subcontractor shall provide original I-9 forms for all employees within 72 hours of Contractor's request.

§ 3.5 Use of Contractor's Equipment. The Subcontractor, its agents, employees, sub-subcontractors, or suppliers shall use Contractor's equipment only with the express written permission of Contractor's designated representative and in

accordance with Contractor's and Contractor's affiliates terms and conditions for such use. If Contractor's equipment is used by Subcontractor, such use shall be at Subcontractor's own risk. Subcontractor agrees to hold Owner and Contractor harmless from any and all damages of every kind whatsoever resulting from such use and shall return all such equipment to Contractor in as good a condition as when received, upon demand by Contractor, or at the completion of the Work, whichever first occurs.

§ 3.6 Substantial Completion. The Work shall be substantially completed in accordance with the Project Contract and in accordance with the Schedule of Work to meet any deadlines imposed by the Contract Documents.

§ 3.7 Time is of the Essence. Subcontractor agrees that time is of the essence in performance of the Work. Subcontractor agrees to see to the performance of the portion of the Work and the work of its sub-subcontractors and suppliers so that the entire project may be completed in accordance with the Contract Documents and the Schedule of Work.

ARTICLE 4. PAYMENT.

§ 4.1 Contract Sum. The "**Contract Sum**" is the amount Contractor agrees to pay the Subcontractor for the performance of the Work as specified in the Project Contract, subject to additions for changes as may be agreed upon in a written change order signed by Contractor, or deductions, offsets, and credits agreed upon by the parties or as otherwise authorized by the Contract Documents. Contractor will make monthly payments on account of Work completed thereof in accordance with and subject to Article 10. Contractor will not be responsible for any payments for costs or expenses incurred by Subcontractor for which payment was sought by the Subcontractor directly from the Owner. Subcontractor agrees that monies received pursuant to this Subcontract shall first be applied to pay for labor and materials for this project and, until all such obligations are satisfied, shall not be diverted to satisfy obligations of Subcontractor on other contracts or other projects, or for any other purpose.

§ 4.2 Price Increases. Subcontractor assumes the risk of any price increases in its labor, materials, fuel, or any other thing necessary for performance and completion of the Work.

§ 4.3 Payment Requests. Monthly payment requests must be submitted when and as specified in the Project Contract, along with Subcontractor's Application and Certificate for Payment ("**Payment Request**"). Each Payment Request shall be accompanied by: (1) a partial waiver of lien executed by the Subcontractor covering the entire amount of the payment requested by the relevant Payment Request, conditioned only upon payment of the amount requested in the subject Payment Request; (2) if requested by Contractor, unconditional partial waivers of lien, executed by Subcontractor and each Sub-subcontractor (or supplier, as requested by Contractor) performing work or furnishing supplies or materials for the project, which partial waiver of lien shall be equal to the amount of all payments made by the Contractor to Subcontractor in all preceding Payment Requests; and (3) if requested by Contractor, conditional partial waivers of lien, executed by each Sub-subcontractor or supplier for the amounts requested on the relevant Payment Request. The Subcontractor shall require that each Payment Request submitted by each Sub-subcontractor or supplier be notarized and accompanied by such substantiating data as Contractor may require. If payments are made on valuations of work done, Subcontractor shall, before the first application, submit to Contractor a schedule of values of the various parts of the Work, aggregating the total sum of the Project Contract, made out in such detail as Subcontractor and Contractor may agree upon, or as required by the Owner or Contract Documents, and, if required, supported by such evidence as to its correctness as Contractor may direct ("**Schedule of Values**"). This Schedule of Values, when approved by Contractor, shall be used as a basis for Payment Requests. When submitting Payment Requests, Subcontractor shall submit a statement based upon its Schedule of Values. The Contractor may require Subcontractor to provide copies of invoices, requisitions, and other information relating to the Work of Sub-subcontractors or suppliers to the extent necessary to assure that payments being made for such Work are appropriate and in conformance with the Schedule of Values or Contract Sum applicable to the respective Sub-subcontractor. Subcontractor shall also furnish such documents as may be required by the Contract Documents and as required by law.

§ 4.3.1 Based upon the Subcontractor's observations and evaluations of each Sub-subcontractor's application for payment, Subcontractor shall review and certify the amounts due the respective Sub-subcontractors or suppliers. The Subcontractor shall prepare a Payment Request based on the sub-subcontractors' and suppliers' applications for payment. The Subcontractor's Payment Request shall constitute a representation to Contractor that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents, and that each Sub-subcontractor or supplier is entitled to payment in the amount certified therein.

§ 4.3.2 If payments are made on account of materials not incorporated in the Work but delivered and suitably stored at the site or at some other location agreed upon in writing, such payments shall be in accordance with the terms and conditions

of the Contract Documents. Payment requests including stored materials must include complete back-up documentation and digital photos clearly displaying segregated identification and storage so materials can be easily viewed and inspected by Nabholz personnel. Verification of insurance and bonding of an off-site storage facility shall be provided immediately upon request.

§ 4.3.3 Each Payment Request submitted by the Subcontractor to Contractor shall itemize and identify the amounts within each application that the Subcontractor intends to pay each sub-subcontractor, materialman, or supplier for work performed on the project up to the date of each application and shall set forth the amount of the contract balance with each such Sub-subcontractor, materialman or supplier which will still be unpaid after payment of the amounts so itemized. The Subcontractor hereby agrees and is required to make payment not later than ten (10) days after receipt of payment from Contractor to each Sub-subcontractor, materialman, or supplier of all amounts identified in each application for payment as intended for said Sub-subcontractor, materialman, or supplier. Each Payment Request shall be accompanied by lien waivers as described in this Article.

§ 4.4 Certification. In each Payment Request, Subcontractor shall certify:

- .1 the Work performed and the materials stored on the site represent the actual value under the terms of this Contract (including all authorized change orders thereto) between the Subcontractor and the Contractor through the date of the Payment Requests and not beyond this date;
- .2 payments, less applicable retention, have been made through the period covered by previous payments received from the Contractor to all subcontractors and sub-subcontractors and any providers or suppliers of all materials and labor used in or furnished in connection with the performance of this Contract;
- .3 the Subcontractor has complied with all collective bargaining agreements and all Federal, State, and local tax laws, including Social Security laws and Unemployment Compensation laws insofar as applicable to the performance of the Contract, and if applicable, that all union pension, health, and welfare benefits to any union employees have been paid in full; and
- .4 in consideration of the payments received and upon receipt of the amount of the Payment Request, the Subcontractor waives, releases, and discharges Contractor and Owner from any and all claims, demands, liens, and/or causes of action of any kind relating to payment, that the subcontractor may have upon or against the premises, Contractor, or Owner except for claim or right of lien for contract and/or change order work performed to the extent that payment is being retained or will subsequently become due.

§ 4.5 Standard Forms. Payment Requests are to be submitted on standard forms furnished or approved by Contractor.

§ 4.6 Insolvency. It is recognized that if the Subcontractor institutes or has instituted against it a case under the United States Code (Bankruptcy Code), such event could impair or frustrate the Subcontractor's performance of this Contract. Accordingly, it is agreed that upon the occurrence of any such event, Contractor shall be entitled to request of Subcontractor, or its trustee or other successor, adequate assurance of future performance. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Contractor, in addition to any other rights and remedies provided by this Contract or by law, to terminate this Contract or any Project Contract. Pending receipt of adequate assurances of performance and actual performance in accordance herewith, Contractor shall be entitled to perform and furnish through itself or through others any such labor, materials or equipment for the Work as may be necessary to maintain the progress of the Work, and to deduct the cost thereof from any monies due or to become due to the Subcontractor under this Contract. In the event of such bankruptcy proceedings, this Contract shall terminate if the Subcontractor rejects this Contract or if there has been a default and the Subcontractor is unable to give adequate assurance that it will perform as provided in this Contract or otherwise is unable to comply with the requirements for assuming this Contract under the applicable provisions of the Bankruptcy Code.

§ 4.7 Evidence of Compliance. Subcontractor shall pay for all materials and labor used in or in connection with the performance of this Contract through the period covered by previous payments received from Contractor, and promptly furnish satisfactory evidence when requested by Contractor, to verify compliance with the above requirements.

§ 4.8 Incidental Changes. The Contractor may direct the Subcontractor to perform incidental changes in the Work that do not involve adjustments in the Contract Sum or Schedule of Work. Incidental changes shall be consistent with the scope and intent of the Contract Documents. The Contractor may initiate an incidental change in the Work by issuing a written order to the Subcontractor. Such written orders shall be carried out promptly and are binding on the parties. If the Subcontractor performs the Work set forth in the Contractor's order for an incidental change without prior written notice to the Contractor that Subcontractor believes such change will affect the Contract Sum or Schedule of Work, the Subcontractor waives any right to request an adjustment to the Contract Sum or extension of the Schedule of Work.

§ 4.9 No Release. Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Work not in accordance with the Contract Documents. Payment to the Subcontractor does not release the Subcontractor of its continuing obligations hereunder which survive payment, including but not limited to Subcontractor's warranty, insurance, and indemnity obligations.

ARTICLE 5. FINAL PAYMENT.

§ 5.1 Final Payment. Final payment shall be due when the Work is fully completed and performed in accordance with this Contract and the Contract Documents, provided that all conditions precedent to payment have been satisfied. Payment shall be made in accordance with, and subject to, Articles 4 and 10 of this Contract.

§ 5.2 Conditions. Before issuance of final payment, Subcontractor shall submit a complete and unconditional waiver of liens and bills paid affidavit to Contractor certifying that all payrolls, material bills, and all known indebtedness connected to the Work have been satisfied or will be satisfied out of the final payment on a form provided or approved by Contractor. If Subcontractor is required to bond the project, Subcontractor must provide a written consent of surety in a form acceptable to Contractor before final payment will be released. Contractor's receipt of payment of retainage withheld by Owner from amounts due to Contractor for the Subcontractor's Work is an express condition precedent to Contractor's obligation to pay such retainage to Subcontractor.

§ 5.3 Acceptance. Acceptance of final payment for the Work by the Subcontractor constitutes a waiver of any claims except those claims identified as being unresolved by the Subcontractor in writing prior to the time of final payment.

ARTICLE 6. PERFORMANCE OR PAYMENT BOND / SURETY.

§ 6.1 Bonds. Contractor reserves the right to approve performance or payment bond sureties or require other types of performance and payment surety in lieu of or in addition to a bond as stated in each Project Contract. Receipt of, or notice of, a lien or levy, or notice of intent to file a lien or levy, or evidence of Subcontractor's failure to timely pay obligations related to the Project Contract in accordance with applicable terms, may be treated as an event of default by Subcontractor.

§ 6.2 Contents of Bonds. All performance and payment bonds shall incorporate this Subcontract by reference and shall provide that the surety waives consent to all changes, modifications, and amendments to this Subcontract. Any such changes, modifications, or amendments that decrease the Contract Sum shall not in any way alter the obligations contained in the performance and payment bonds except to reduce the amount of the bonds by a corresponding amount. Any changes, amendments, or modifications which increase the Contract Sum shall be supported by an increase in the amount of the performance and the payment bonds to the extent necessary to equal 100 percent of the Contract Sum as increased. Any terms contained in the performance or payment bond that attempt to reduce the statute of limitations period under applicable law shall be unenforceable.

§ 6.3 Insolvency of Surety. In the event the surety that provided bonding becomes insolvent or fails, Subcontractor shall immediately replace, at its expense, the bonds with valid bonds from a new surety meeting the above requirements. Failure of Subcontractor to replace bonds shall constitute a failure to comply with this Subcontract which, at Contractor's election, shall allow withholding of funds, termination, and other relief available under the Contract Documents or applicable law.

§ 6.4 Joint Checks. Notwithstanding the provisions of Articles 4 and 10 of this Contract concerning payment, progress or final payments may be made in the form of checks payable jointly to Subcontractor and its creditors including, without limitation, Sub-subcontractors, material suppliers, laborers, labor unions, equipment suppliers, and sureties, (hereinafter defined as "**Subcontractor's Creditors**") or by direct payment to Subcontractor's Creditors as provided herein. In the event Contractor receives any notification from any such Subcontractor's Creditors claiming that Subcontractor has failed to timely pay any indebtedness for labor, materials, services, equipment, benefits or the like in connection with the Work performed by Subcontractor on the project, Contractor may, after three (3) days' written notice to Subcontractor, pay the amount of any such claimed liability and recover the amount thereof from Subcontractor, directly or by application of any portion of the Contract Sum then or thereafter becoming due. Contractor's authority to make payment of Subcontractor's liabilities by joint check or by direct payment is completely discretionary, and Contractor has no legal or equitable obligation to any of Subcontractor's Creditors or other third-party creditor.

ARTICLE 7. JOB CONDITIONS AND JOB SAFETY.

§ 7.1 Regulations. Subcontractor must comply with all federal, state, and local safety laws and regulations, including without limitation, OSHA requirements and standards.

§ 7.2 Substance Abuse Policy. It is the policy of the Contractor to provide a work environment free of substance abuse for all workers. When requested, Subcontractor shall present to Contractor, in writing, a copy of Subcontractor's

employment policy relative to maintaining a safe environment for all of Subcontractor's employees and protecting the general public from substance abuse on or near a construction project site. Once brought to the attention of his or her immediate supervisor, any employee jeopardizing his or her safety or the safety of others by the use or suspected use of drugs or other substance, or otherwise appearing unfit to perform his or her job duties, will be immediately removed from the job site.

§ 7.3 OSHA and Project Safety. Per OSHA Regulation 1926.16 ("Rules of Construction") the Subcontractor is responsible for safety relative to the portion of the Work performed under this Contract.

§ 7.4 Site Cleanup. Subcontractor shall keep the project site and work areas clean at all times and must sweep each work area and remove all debris prior to discontinuing work in each area. If the Subcontractor fails to immediately commence compliance with cleanup duties within forty-eight (48) hours after notification from the Contractor of noncompliance, the Contractor may implement appropriate cleanup measures without further notice and deduct the cost thereof from any amounts due or to become due the Subcontractor under this Contract. Unless otherwise specified or required by law or regulation, all debris will be sorted as required and deposited on the Project site at a location designated by the project superintendent. Subcontractor shall comply with Contractor's on-site recycling and refuse programs, if any. Subcontractors shall follow any Nabholz or Owner sustainability plans and programs regardless of whether the job is certified by the U.S. Green Building Council, Green Globes, or any other building certification entity.

§ 7.5. Safety and Reporting. Subcontractor shall comply with all statutory and contractual safety requirements applying to the Work and those initiated by the Contractor and Owner. Mandatory eye protection shall be required of all personnel on the project including specialty contractors, suppliers of any tier in accordance with Contractor's policy. Subcontractor shall furnish its employees with required personal protective equipment including but not limited to, hard hats, safety glasses, respiratory protection, ear plugs, etc. Subcontractor shall report promptly to Contractor any accident involving personal injury requiring a physician's care, any property damage, or any failure that could have resulted in serious personal injury, whether such an injury was sustained or not. A detailed written report shall be furnished if requested by and in a format acceptable to the Contractor. At the Contractor's request, Subcontractor shall provide pertinent safety information including but not limited to the Subcontractor's experience modification rate, OSHA 300 logs, OSHA citations, and man-hours worked.

§ 7.6 Indemnity for Safety Violations. Subcontractor shall indemnify Contractor from any and all expenses incurred by Contractor in defense of safety violations, or alleged violations (including but not limited to violation of OSHA requirements and standards) resulting from acts by Subcontractor, including but not limited to attorneys' fees, litigation costs, and overhead expenses. The Subcontractor shall indemnify the Contractor from fines or penalties imposed on the Contractor as a result of safety violations, but only to the extent that such fines or penalties are caused by the failure of Subcontractor or its sub-subcontractors or suppliers to comply with applicable safety requirements, and then only to the extent that such fines or penalties are determined to be Subcontractor's responsibility based upon the particular failure of compliance cited, and not due to prior or repeated safety violations by the Contractor.

§ 7.7 Safety Representative. The Subcontractor is required to designate an individual at each project site in the employ of the Subcontractor who shall act as the Subcontractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Subcontractor in writing to the Contractor, the designated safety representative shall be the Subcontractor's project superintendent.

§ 7.8 Prevention of Accidents. Prevention of accidents at the site is the responsibility of the Subcontractor and all other subcontractors, persons, and entities at the site. Establishment of a safety program by the Contractor shall not relieve the Subcontractor or other parties of their safety responsibilities. The Subcontractor shall establish its own safety program implementing safety measures, policies, and standards conforming to those required or recommended by the governmental and quasi-governmental authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Contract Documents. The Subcontractor shall comply with any reasonable recommendations of Contractor's site Superintendent, Project Manager, General Superintendent, Safety Director, and insurance companies having an interest in the project and shall stop any part of the Work that the Contractor, in Contractor's sole discretion, deems unsafe and shall immediately take corrective measures satisfactory to the Contractor. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility to prevent accidents.

§ 7.9 Written Safety Report and Safety Meetings. If requested by Contractor, Subcontractor will submit to the Contractor a weekly written safety report on a form acceptable to Contractor. Subcontractor must comply with applicable OSHA requirements to hold regular safety meetings. Meeting minutes and list of all attendance shall be delivered to the Contractor's site superintendent on a weekly basis.

§ 7.10 Unsafe Conditions. Contractor, at Contractor's sole discretion, may direct Subcontractor to cure or correct any condition Contractor deems unsafe. If Subcontractor fails to promptly cure or correct any such condition, Contractor may take whatever steps are necessary to cure or correct the condition and charge the Subcontractor for costs incurred. Should Contractor cure or correct an unsafe condition, such action in no way relieves Subcontractor of the responsibility to provide a safe workplace and its duty to indemnify Contractor as required by this Contract. In the event Subcontractor has repeated safety issues on the project, Contractor may, at its sole discretion, require Subcontractor to furnish a full-time safety engineer for the project at Subcontractor's sole cost and expense. This safety engineer shall have completed OSHA 30-Hour training within the prior 12 months and shall be responsible for full and complete understanding of all safety laws, rules, and regulations applicable to Subcontractor's work on the project.

§ 7.11 Use of English. For the purpose of performing tasks safely, when non-English speaking Subcontractor personnel are employed or present on the project site, it is the Subcontractor's obligation and responsibility to ensure that all personnel understand all work area signage, emergency announcements, user information, including but not limited to video or audio recordings provided, and that all non-English speaking personnel are capable of notifying others of safety hazards encountered or created in the workplace or project site. Supervision by an individual capable of translating shall be used to ensure all signs, announcements, or notifications can be translated immediately, providing for effective and safe work-rule enforcement. If there are multiple non-English speaking crews, a translator is required for each crew. If the translator leaves the project site where the Work is being performed by non-English speaking personnel, the Work being performed shall stop and the non-English speaking personnel shall leave the worksite areas until they have a translator, unless Contractor supplies a translator at Subcontractor's cost. Any charges to the Contractor for labor or rental shall cease for the time the non-English speaking personnel are without a translator.

§ 7.12 Qualifications. Subcontractor shall assure its employees on the job site are qualified to operate aerial lifts, scissor lifts, material handlers, forklifts, and other equipment necessary to perform Subcontractor's Work. Subcontractor shall provide a written list of such qualified employees to Contractor. Subcontractor shall identify its competent employee qualified to oversee any Work performed using a scaffold. Supporting documentation must be provided by Subcontractor upon request.

ARTICLE 8. INSURANCE REQUIREMENTS.

§ 8.1 At its own expense, Subcontractor agrees to obtain, maintain, and pay for insurance as outlined in this Article from companies satisfactory to the Contractor, licensed to provide coverage in the state in which the project is located, and with AM Best ratings of not less than A- VIII during the entire duration of its Work under this Subcontract, or as otherwise designated herein.

- .1 Any deductibles or self-insured retentions for any insurance required in this Article shall be the sole responsibility of the Subcontractor. Any self-insured retentions on any of the coverages provided by Subcontractor must be clearly disclosed on the Certificate of Insurance and are subject to Contractor's approval. Contractor maintains the right to require a proper form of collateral for any self-insured retention.
- .2 Subcontractor agrees that no later than ten (10) days before beginning any Work under this Subcontract, and as an ongoing condition precedent to payment for the Work, Subcontractor will obtain the insurance required herein and provide Contractor with a Certificate of Insurance and all necessary endorsements required to demonstrate its compliance with this Article.
- .3 If permitted by law, Subcontractor shall provide Contractor 30-day prior written notice before cancellation, nonrenewal, or reduction of coverages required by this Article.
- .4 Subcontractor agrees that its failure to obtain or maintain and pay for the insurance required by this Article or to provide adequate and ongoing evidence of compliance shall be deemed a material breach of this Subcontract and shall entitle Contractor to cancel this Subcontract and recover damages, at its election, including holding any amounts otherwise owed Subcontractor until Subcontractor provides proof of insurance as required. Subcontractor agrees to the holding of any such amounts for the reasons stated herein and that such event constitutes a *bona fide* dispute for purposes of any applicable prompt payment law. The failure of the Contractor to make the election upon receipt of the Certificate of Insurance shall not constitute a waiver by Contractor to make the election at any time thereafter.
- .5 Contractor's failure to object to the form of any Certificate of Insurance, Endorsement, or other evidence of insurance provided by the Subcontractor shall not be deemed to be a waiver of any of Subcontractor's obligations under this Article.
- .6 Providing the types of policies and limits of coverage required by this Article shall not be interpreted to limit the liabilities of Subcontractor otherwise assumed under this Subcontract.
- .7 If Subcontractor uses Umbrella or Excess Liability Insurance to arrive at the limits required herein for employer's liability, commercial general liability, or automobile liability, such coverage shall follow-form with any primary policies and shall be subject to all the requirements of this Article, including but not limited to coverage for the Additional Insureds as outlined herein. Such Umbrella or Excess Liability

Insurance must retain a minimum limit of \$1,000,000 after accounting for partial attribution of its limits to underlying policies.

- .8 Certified copies of Subcontractor insurance policies must be provided to Contractor upon request.
- .9 Subcontractor agrees to cause all of its sub-subcontractors, vendors, suppliers, and service providers of any tier to comply with these minimum requirements, including addition of the Additional Insureds on all policies required of such sub-subcontractor, vendor, supplier, and service provider of any tier.
- .10 "Opt Out" or other similar non-standard or self-insurance programs must be approved by Nabholz prior to commencement of Subcontractor's Work.
- .11 Waiver of Subrogation in favor of Additional Insureds as outlined in this Article applies to any insurance required hereunder or otherwise maintained by Subcontractor.
- .12 Subcontractor's insurance, whether or not specified or required herein, shall be primary to any insurance maintained by the Additional Insureds as outlined in this Article.
- .13 If Subcontractor maintains insurance policies with limits greater or coverage broader than the limits and coverages stated herein, Subcontractor agrees that such higher limits and broader coverage shall be deemed to be the minimum limits and coverage required under this Subcontract. Subcontractor further agrees that the higher limits and broader coverage shall be available to the Additional Insureds on a primary and non-contributory basis.

§ 8.2 Workers' Compensation / Employers Liability Insurance as follows:

- .1 Workers compensation and employer's liability insurance as required by statute in the state in which the Work is performed, or the state of employees' hire.
- .2 Other States Endorsement providing coverage for all states.
- .3 Employer's liability insurance shall have limits no less than the following:
 - \$1,000,000 each accident;
 - \$1,000,000 each disease;
 - \$1,000,000 each employee per disease; and
 - Stop Gap coverage with limits as noted above in states with monopolistic workers' compensation coverage.
- .4 U.S. Longshoremen and Harbor Worker's Act (USL&H), the Jones Act coverage when such laws, regulations, or statutes apply to Subcontractor's employees.
- .5 Endorsement waiving subrogation in favor of the Indemnitees noted in Article 10.8, except in jurisdictions where prohibited by law.
- .6 Policy shall contain a Maritime Coverage Endorsement, if applicable.
- .7 Policy shall contain a Voluntary Compensation Endorsement (or equivalent) providing coverage for executive officers, partners, and sole proprietors if coverage is not otherwise scheduled on the workers' compensation policy.
- .8 If Subcontractor utilizes an employee leasing firm or will supply equipment with an operator, the workers' compensation coverage applying to that employee shall contain an Alternate Employers Endorsement of NCCI Form WC 00 03 01 A, naming Nabholz Construction Corporation, its parent, subsidiary, related, and affiliated companies.

§ 8.3 Commercial General Liability Insurance no less than the following:

- .1 Policy form no less broad than the current ISO form CG 00 01.
- .2 Issued by a company satisfactory to the Contractor.
- .3 Limits not less than:
 - \$2,000,000 per occurrence
 - \$2,000,000 general aggregate
 - \$2,000,000 products-completed operations aggregate
- .4 General Aggregate shall be project specific. If the General Aggregate is not on a per project basis, the Subcontractor shall provide a General Aggregate limit no less than \$5,000,000.
- .5 Claims made policies are not acceptable.
- .6 There shall be no exclusion for residential or habitational construction operations if Subcontractor's Work involves residential or habitational construction.
- .7 There shall be no EIFS exclusion, or exclusion applying to similar systems.
- .8 There shall be no subsidence or earth movement exclusions.
- .9 There shall be no prior work exclusions.
- .10 There shall be no cross-liability exclusion, except for Named Insureds.
- .11 There shall be no breach of contract exclusions.
- .12 There shall be no exclusion or changes to the standard ISO 00 01 policy wording for the definition of "insured contract." Such ISO wording includes the assumption of the tort liability of another.

- .13 There shall be no action-over or similar employee-injury exclusion.
- .14 There shall be no change to the standard ISO 00 01 employers' liability exclusion regarding the exception for contractual assumed liability.
- .15 There shall be no exclusion for work from heights
- .16 There shall be no exclusions for occurrences causing continuous or progressively deteriorating injury or damage.
- .17 There shall be no exclusion for damage to work performed by subcontractors on your behalf.
- .18 Any professional liability exclusion must contain an exception for construction means and methods.
- .19 Coverage for each commercial general liability and umbrella/excess liability shall apply on a primary basis and any coverage maintained by Contractor and the Additional Insureds shall be non-contributory.
- .20 Coverage shall contain an ISO standard severability of interests clause and separation of insureds clause.
- .21 ISO Endorsement **CG 24 04 waiving rights of subrogation** in favor of Indemnitees noted in Article 10.8 and the Additional Insureds, except where prohibited by law.
- .22 Policy shall be endorsed with a blanket additional insured endorsement meeting the requirements outlined herein that specifies that any person or organization that the named insured has agreed to in writing to name as an additional insured is entitled to coverage as an additional insured under the policy. Such additional insured coverage must be on ISO Endorsements **CG 20 10 10 01 and CG 20 37 10 01 for the Additional Insureds**. The following shall be named as Additional Insureds:
- Nabholz Construction Corporation, its parent, subsidiary, related, and affiliated companies;
 - Project Owner;
 - Project Architects and Engineers;
 - Each of their respective employees, agents, principals, members, officers, managers, elected boards, parent companies, subsidiaries, affiliates, successors, and assigns; and
 - Indemnitees noted in Article 10.8, and as otherwise noted in the Prime Contract; and
 - Additional insureds as noted in the Prime Contract.
- .23 Within this Subcontract, the additional insured listing above is otherwise referred to as "**Additional Insureds**."
- .24 The Additional Insured coverage shall be for both ongoing and completed operations.
- .25 Subcontractor's insurance coverage will not be limited to the Additional Insureds' comparative negligence, vicarious liability of the Contractor, or respondeat superior liability for the acts or omissions of Subcontractor. In the event this requirement is not permitted by state law, the provision shall be interpreted and applied to the extent permitted by applicable law.
- .26 These liability policies will provide Additional Insureds with insurance coverage entitling them to defense and indemnity from and against any liability or claim of liability arising out of, or in any way related to, Subcontractor's Work or operations pursuant to this Subcontract, including preparation to perform such Work or operations.
- .27 If the above noted additional insured endorsement forms are not utilized, Subcontractor's insurer must use a form or endorsement providing a coverage at least equivalent in scope to CG 20 10 10 01 and CG 20 37 10 01 combined. Regardless of the form of endorsement used, it shall require the maximum scope of coverage allowed under law.
- .28 Such Additional insured endorsement forms or policy forms shall not exclude coverage for products/completed operations, and will apply independently of, and not coextensively, with Subcontractor's indemnity obligations as stated in Article 10.8.
- .29 The insurance required by this Section on behalf of the Additional Insureds will apply to bodily injury and property damage claims arising from Subcontractor's operations regardless of the actual or alleged fault, negligence, or proximate cause of any of the Additional Insureds and regardless of whether the Subcontractor is named or not named in the claim, lawsuit, or complaint. The additional insurance coverage required by this Article will apply to any claims or liability arising out of Subcontractor's Work or operations, even if Subcontractor's indemnity obligations do not apply or are prohibited by law.
- .30 All insurance required by this Article, including all coverage for Additional Insureds, shall be maintained throughout the duration of the project and such time Subcontractor or Additional Insureds may be held legally liable for the Work, including the warranty period, or for such longer period as may be required under the terms of the Contract Documents, whichever is longer.
- .31 Subcontractor shall require any lower tier subcontractor(s) providing labor, services, or materials for the project to recognize and provide additional insured coverage as described herein for the Additional Insureds noted above on their Commercial General Liability policy and to provide Contractor evidence of such upon request.

- .1 Coverage for “any auto,” including owned, non-owned, and hired motor vehicles.
- .2 Limits of liability no less than \$2,000,000 each occurrence, combined single limit.
- .3 Additional insured endorsement or omnibus clause including each of the Additional Insureds.
- .4 Waiver of subrogation endorsement in favor of the Indemnitees and Additional Insureds, except where prohibited by law.
- .5 Additional insured endorsement including each of the Additional Insureds, with such coverage being primary and non-contributing to any coverage maintained by such Additional Insured.
- .6 Waiver of subrogation endorsement in favor of the Indemnitees and Additional Insureds, except where prohibited by law.
- .7 If Subcontractor’s work will be performed within fifty (50) feet of a railroad, this policy shall be endorsed with ISO CA 20 70.
- .8 If Subcontractor’s work involves the transport of pollutants, policy shall be endorsed with MCS-90 and ISO Form CA 99 48 10 01 Pollution Liability – Broadened Pollution for Covered Autos.

§ 8.5 **Umbrella/Excess Liability**

- .1 This insurance shall be following-form with underlying coverage of Commercial General Liability, Employers Liability, and Automobile Liability required in this Article 8.
- .2 Limits shall be no less than \$1,000,000 each occurrence, \$1,000,000 general aggregate, \$1,000,000 completed operations aggregate.
- .3 Policy shall include completed operations coverage for the entire period of the statute of limitations or repose, but in no event less than three (3) years from the date of Substantial Completion.
- .4 This insurance shall include Additional Insureds, and coverage for Additional Insureds shall be primary and non-contributing to any insurance maintained by the Additional Insured(s).
- .5 Such insurance shall include a waiver of subrogation in favor of Additional Insureds.

§ 8.6 **Pollution Liability Insurance** (if Subcontractor is performing mechanical, electrical, plumbing, drilling/subsurface activities, demolition, drywall/insulation, building envelope systems, moisture barrier protection application work OR Subcontractor’s work involves any environmental remediation or Subcontractor is otherwise handling, disposing, or installing hazardous materials or pollutants) no less than the following:

- .1 Coverage shall be on a Pollution Liability policy or on a Commercial General Liability policy with a Pollution Endorsement that provides coverage for bodily injury and property damage arising from a sudden or gradual pollution event in connection with Subcontractor’s activities and those activities of its subcontractors.
- .2 The limit of insurance under either form of coverage shall be a per-occurrence and aggregate amount of not less than \$2,000,000.
- .3 Coverage shall protect against the actual or alleged liability and costs arising from the sudden, gradual, and accidental release or discharge of pollutants and hazardous materials from the Subcontractor’s work. Such insurance shall provide coverage for clean-up costs and remediation expenses (including costs for investigation, sampling, characterization, and monitoring), legal costs, defense costs, natural resource damages, and transportation of pollutants on and off the project site.
- .4 Coverage for non-owned disposal site liability shall be provided if Subcontractor’s scope of work, or work performed on its behalf, includes responsibility for transporting and disposing of contaminated material or waste.
- .5 Policy shall have no exclusions for silica, mold, or fungi.
- .6 Policy shall include contractual liability coverage applicable to the indemnity provisions of this Subcontract, and shall not contain a cross-suits exclusion, except for Named Insureds.
- .7 If a stand-alone policy is provided, it shall extend coverage on an occurrence basis.
- .8 If coverage is written on a claims-made basis, the retro date shall be on or before the date Subcontractor commenced work.
- .9 Additional Insured endorsement, including completed operations, for each of the Additional Insureds.
- .10 Shall apply on a primary basis to any coverage maintained by the Additional Insureds, and any coverage maintained by the Additional Insureds shall be non-contributory.
- .11 Waiver of subrogation endorsement in favor of the Indemnitees and Additional Insureds, except where prohibited by law.
- .12 Coverage shall be maintained for the duration of the Project Contract and the period of time during which the Subcontractor or Contractor may be held legally liable for its Work or three (3) years following completion of the Work, whichever is longer.

- § 8.7 **Professional Liability Insurance** (if Subcontractor's scope of work includes any professional, design, or engineering service responsibility (including subcontractors who have been delegated design-assist or design review responsibilities) no less than the following:
- .1 Professional liability and errors and omissions insurance coverage for claims that arise from the actual or alleged negligent acts, errors, or omissions of Subcontractor or any entity for which Subcontractor is legally responsible, in the provision of professional services.
 - .2 Policy and all renewals thereof shall have an inception and retroactive date prior to the Date of Commencement of all professional activities in connection with the project.
 - .3 Coverage shall be maintained for the period of time. Subcontractor may be held legally liable for its professional services or three (3) years following completion of professional services, whichever is longer.
 - .4 Policy and occurrence minimum limits not less than \$1,000,000 per claim and \$2,000,000 annual aggregate.
 - .5 Insurance shall be obtained by the party performing the professional, design, engineering, or delegated design-assist service.
 - .6 Coverages shall include liability arising from professional services and shall not exclude coverage related to: the scope of services being provided, third-party bodily injury and property damage, pollution conditions arising out of professional services, delays in project completion and cost overruns, mold or microbial matter, or design-build or contractor-driven projects.
- § 8.8 **Asbestos or Lead Abatement Liability** (if Subcontractor's scope of work includes asbestos or lead abatement, respectively) no less than the following:
- .1 Asbestos or lead liability insurance coverage on an occurrence basis for claims arising out of abatement, removal, storage, transportation, and disposal activities.
 - .2 Per occurrence limits of not less than \$5,000,000.
- § 8.9 **Protection and Indemnity Insurance** (if Subcontractor's work involves the **use of watercraft**) of no less than the following:
- .1 Coverage shall apply to all of the crew members as well as passengers.
 - .2 Limits of not less than \$5,000,000, or the value of the watercraft, whichever is greater.
- § 8.10 **Contractor's Equipment Floater Insurance** no less than the following:
- .1 Coverage shall apply to all equipment utilized by the Subcontractor in the performance of this Subcontract and all equipment rented or leased to the Contractor by the Subcontractor as part of this Subcontract.
 - .2 Limits of liability shall be not less than the replacement value of Subcontractor's owned, rented, leased, or borrowed equipment, except such items which are included in and remain part of the permanent construction.
 - .3 Waiver of subrogation endorsement in favor of the Additional Insureds, except where prohibited by law.
- § 8.11 **Riggers Liability Insurance** (if Subcontractor's work involves conveying the property of others by hoist, crane, or mobile equipment to facilitate its installation) of no less than the following:
- .1 Subcontractor shall provide Riggers Liability through a separate riggers liability policy or by an endorsement to Subcontractor's existing Commercial General Liability policy. If provided by an endorsement on the Commercial General Liability, the endorsement must delete the exclusion of personal property in the insured's care, custody or control and delete the exclusion of "that particular part of real property" on which the Named Insured is performing operations.
 - .2 Coverage may also be provided by an Installation Floater insurance policy with an endorsement to cover loss to property of others.
 - .3 Limits of liability shall be not less than \$1,000,000 each occurrence and aggregate. Increased limits may be required depending on the value of property or equipment being lifted or moved for Owner or others.
- § 8.12 **Cyber Liability Insurance** (if Subcontractor will have access to any person's or organization's confidential or personal information) no less than the following:
- .1 Limits of liability shall not be less than \$1,000,000 each claim and \$2,000,000 aggregate.
 - .2 Coverage shall apply to claims involving privacy violations (including alleged violations of any federal, state, local or foreign privacy protection laws and regulations), information theft, damage to or destruction of electronic information, infringement of intellectual property, intentional and/or unintentional release of confidential or private information, alteration of electronic information, extortion, and network security arising from Subcontractor's work.
 - .3 Coverage shall include expenses of notifying affected individuals/entities and providing credit monitoring or similar services for those affected.

- .4 Coverage shall be maintained for the duration of the Subcontract and the period of time during which the Subcontractor or Contractor may be held legally liable for its Work or three (3) years following completion of the Work, whichever is longer.

§ 8.13 **Electronic Data Liability Insurance** (if Subcontractor's work is in or adjacent to a server room or data center) no less than the following:

- .1 Coverage shall be on an Electronic Data Liability policy written on ISO Policy Form CG 00 65 12 07 or on a Commercial General Liability policy endorsed with ISO Endorsement Policy Form CG 07 37 04 13.
- .2 Limits of liability shall not be less than \$1,000,000 each claim.
- .3 This insurance shall include Additional Insureds, and coverage for Additional Insureds shall be primary and non-contributing to any insurance maintained by the Additional Insured(s).

§ 8.14 **Drone Liability Insurance** (if drones are used by Subcontractor or on Subcontractor's behalf):

- .1 Limits of liability shall not be less than \$1,000,000 each occurrence (combined single limit for bodily injury and property damage) and \$1,000,000 personal injury.
- .2 Coverage shall apply to any owned, leased, borrowed, rented, or hired unmanned aircraft.

§ 8.15 **Boiler and Machinery Insurance** (if Subcontractor's work involves installation, maintenance, or any work involving boilers, machinery, or refrigeration units, and the like) no less than the following:

- .1 Limits of liability shall not be less than \$1,000,000 each occurrence.

§ 8.16 **Motor Trucker Cargo and/or Warehouseman's Legal Liability** (if Subcontractor's work involves moving, transportation, and/or storage of Owner property) no less than the following:

- .1 Limits of liability shall not be less than the replacement value of the Owner property, artifacts, equipment and/or material.
- .2 While such property is in the care, custody, and control of Subcontractor, coverage shall include loading, unloading, transportation, and return of said artifacts, equipment, and/or material up to the acceptance by the Owner.
- .3 Coverage shall contain no limiting endorsement or exclusions with respect to fine arts, historic documents, antiques, or breakage.

§ 8.17 **Railroad Protective Liability** (if Subcontractor's work is within 50 feet of a railroad, including without limitation WMATA, VRE, etc.) no less than:

- .1 Limits and terms of coverage set forth by the railway operator.

§ 8.18 **Builders Risk Insurance**

- .1 Builder's Risk Insurance may be provided by Owner or Contractor; however, it shall be the obligation of the Subcontractor to purchase and maintain any supplementary property insurance that Subcontractor deems necessary to protect Subcontractor's interest in the Work, including without limitation off site stored materials and materials in transit.
- .2 Any deductible amount applied to any loss payable under the Builders Risk Insurance shall be borne by the Insured's interest whose work is damaged in direct proportion as their individual losses shall bear to the total loss, regardless of whether such loss is to work installed and completed, to materials stored on or off the site, or to materials in transit.
- .3 Contractor and Owner neither represent nor assume responsibility for the adequacy of the Builders Risk Insurance to protect the interests of the Subcontractor.
- .4 Subcontractor shall waive rights of subrogation with respect to any claims involving the builder's risk/property insurance maintained by Owner, or Contractor, or Subcontractor.

ARTICLE 9. TEMPORARY SITE FACILITIES, UTILITIES AND SIGNAGE.

§ 9.1 Temporary Facilities. Unless the Project Contract or other Contract Documents specify otherwise, temporary toilets, power, and a water source are provided by Contractor. Subcontractor will use only designated roads, streets, drives, parking areas, storage areas, and toilet facilities. To the extent furnished or used by Subcontractor, Subcontractor shall be responsible for all storage facilities, workshops, and offices, and cleanup of same. Subcontractor-furnished temporary facilities are subject to Contractor's approval.

§ 9.2 Utility locations. Subcontractor is responsible for contacting local utility agencies for underground line locations prior to commencement of Work. Contractor is not responsible for any claims arising from line location problems or errors. Unless otherwise provided in the Contract documents, all water, gas, irrigation, lighting, power, telephone, sewer, and other surface or subsurface structures or lines will not be disturbed, disconnected, or damaged as a result of

Subcontractor's Work. In the event of such disturbance, disconnection, or damage arising from Subcontractor's Work, Subcontractor shall bear all associated costs including but not limited to reconnection, replacement, and repair.

§ 9.3 Signage. Any signage at the project site is subject to the Contractor's approval.

ARTICLE 10. SUBCONTRACTOR AND CONTRACTOR COVENANTS.

In addition to the foregoing provisions, the parties also agree:

§ 10.1 Obligations and Responsibilities. Subcontractor shall be bound to Contractor by the terms of the Contract Documents and this Contract and assume toward Contractor all the obligations and responsibilities that Contractor assumes toward the Owner, with respect to the Subcontractor's Work.

§ 10.2 Legal Existence. Subcontractor hereby represents and warrants to Contractor that: (i) it is duly organized, validly existing, registered, and in good standing under the laws of the state of its formation; (ii) it is registered and in good standing under the laws of the state of the project; (iii) the execution, delivery and performance of this Contract has been duly authorized by all necessary action on the part of Subcontractor, does not and will not require the approval of any other owners or interest holders of Subcontractor; and (iv) the person (whether one or more) executing this Subcontract on behalf of Subcontractor has or have been properly authorized to execute the same.

§ 10.3 Notice of Defects. Subcontractor shall promptly notify Contractor of any discovered deficiency or faulty workmanship by another contractor that affects Subcontractor's Work. If Subcontractor fails to so notify Contractor prior to the installation of Subcontractor's Work, Subcontractor shall be solely responsible for the costs of repair or replacement of Subcontractor's Work.

§ 10.4 Installation of Work. Subcontractor shall install Work so that the actual final conditions and details shall result in alignment of finish surfaces. Subcontractor is responsible for verifying all dimensions and lay-out before commencing Work. The Contractor may establish principal axis lines of the building and site whereupon the Subcontractor shall layout and be strictly responsible for the accuracy of the Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to perform the Work in accordance with this Contract and industry standards.

§ 10.5 Protection of Work. Subcontractor shall protect the work and finishes of other trades, suppliers, and vendors, protect existing property, and protect property adjacent to the project from loss or damage caused by Subcontractor or those for whom Subcontractor is responsible. Subcontractor will ensure each day's Work is properly covered and protected from the elements.

§ 10.6 Delegation and Subcontracting. Subcontractor shall not delegate, transfer, convey, subcontract, relinquish, or otherwise dispose of the whole or any part of its duties under this Contract without the prior written approval of the Contractor. The Contractor's approval shall not be unreasonably withheld.

§ 10.7 Warranty. Subcontractor hereby warrants that the Work shall be performed strictly in accordance with the Project Contract, this Contract, and all other Contract Documents. The Subcontractor warrants that materials and equipment furnished under this Contract will be of good quality and new unless the Contract Documents require or permit otherwise. Work, materials, or equipment not conforming to these requirements may be considered defective. The warranties provided in this Section 10.7 are in addition to, and not in lieu of, any other right or remedy Contractor may have or any other warranty given by Subcontractor and will not limit any recovery Contractor may seek or any remedy of Contractor under the Contract or applicable law. Specifically, and not by limitation, the express warranty provided by Subcontractor and its subcontractors will not limit any implied warranties which may apply to Subcontractor's Work.

§ 10.8 Indemnity. To the maximum extent permitted by law, Subcontractor shall indemnify, hold harmless, and defend Contractor and the Owner, their affiliated and parent companies, and agents, employees, directors, managers, officers, and consultants of either (hereinafter "Indemnitees") from any lawsuits, causes of action, claims, liabilities and damages, of any kind and nature, including but not limited to, attorney's fees and costs arising out of the performance of this Contract, and including, but not limited to, any and all lawsuits, causes of action, claims, liabilities and damages, as provided above, which Indemnitees may sustain by reason of any failure by Subcontractor to indemnify as provided herein and elsewhere in this Contract, or any failure by Subcontractor to otherwise perform its obligations pursuant to this Contract, or by reason of the injury to or death of any person or persons or the damage to, loss of use of or destruction of any property resulting from Work undertaken herein, including the use or rental of any equipment supplied by Indemnitees, which are caused, in whole or in part, by the negligence of Subcontractor, regardless of whether they are caused in part by the negligence of an Indemnitee; however, Subcontractor's duty to indemnify, hold harmless and defend the Indemnitees does not extend to any particular Indemnitee's negligence that is the sole cause of any injury to persons or property.

§ 10.9 No Limitation on Indemnity. In claims against any person or entity indemnified under Section 10.8 by an employee of the Subcontractor, the Subcontractor's sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 10.8 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor, or the Subcontractor's sub-subcontractors under workers' compensation acts, disability benefit acts, or other employee benefit acts. In the event the indemnity, defense, and hold harmless obligations set forth in this Contract are not enforceable under applicable law, the provision shall be interpreted to provide for the maximum indemnity, defense, and hold harmless obligations that may be imposed by applicable law.

§ 10.10 Lien Indemnification. Subcontractor shall indemnify Contractor for all premiums, costs, and fees, including attorneys' fees, incurred by Contractor to remove liens or levies filed or threatened against the project as a result of Subcontractor's failure to pay obligations related to the Work.

§ 10.11 Progress Reports. Subcontractor shall furnish periodic progress reports and schedules of the Work as requested by Contractor including the status of materials or equipment under this Contract that may be in the process of preparation or manufacture.

§ 10.12 Changes. Subcontractor shall perform any and all changes or deviations from the original plans and specifications without nullifying the original Contract when specifically ordered to do so in writing by the Contractor. Subcontractor, prior to commencement of this revised work, shall submit to Contractor written copies of the cost or credit proposal for such revised work in a manner consistent with the Contract Documents. Otherwise, Subcontractor agrees to proceed with the Work as changed when so ordered in writing by Contractor so as not to delay the progress of the Work, as changed, and pending any determination of the value thereof. For changes directed by Owner, Subcontractor shall only obtain an increase to its Contract Sum to the extent of Subcontractor's allocable share of any increase that Contractor receives from Owner under the Prime Contract.

§ 10.13 Coordination. Subcontractor shall cooperate with Contractor and all others whose work may interfere with the Work and cooperate with Contractor in scheduling the Work so as not to conflict or interfere with the work of others. Subcontractor shall promptly submit shop drawings, samples, or other submittals as required in order to carry on the Work efficiently and at speed that will not cause delay in the progress of Contractor's work or the work of other subcontractors. By submitting shop drawings, product data, cut sheets, mix designs, samples, or similar submittals, the Subcontractor represents to the Contractor that the Subcontractor has (1) reviewed them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Subcontractor shall:

- .1 Specifically note and immediately advise the Contractor of any interference with the Work;
- .2 Participate in the preparation of coordination drawings and work schedules involving the Work;
- .3 Review the Contract Documents applicable to its Work and notify Contractor of any error or inconsistency in the Contract Documents that conflicts with the intended completion or use of the project within five (5) days of discovering the error. Also, Subcontractor shall notify Contractor orally and in writing if it discovers that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, rules or regulations, within five (5) days of discovering the discrepancy. If Subcontractor or its sub-subcontractors perform Work when they know, or in the exercise of reasonable diligence should have known, of either situation, Subcontractor shall assume full responsibility for such

Work and shall bear the costs to correct any problems. No extension of the Schedule of Work shall be granted as a result thereof;

- .4 If required, maintain a complete set of up to date "as-built" drawings on site at all times during the performance of its Work. Upon completion of the Work and prior to release of retention, if any, Subcontractor shall, at its cost, transpose all "as-built" information in red-lined format, including the dimensioned locations of significant concealed items of its Work, and deliver to Contractor. In addition, Subcontractor shall retain all records (regardless of form) relating to the project for a minimum of seven (7) years from the date of substantial completion or the statute of repose period for the state in which the project is located, whichever time period is longer;
- .5 Comply with Contractor's Storm Water Pollution Plan for the duration of the project, remove and clean any soil that is tracked onto streets or adjacent property, and immediately clean any spill resulting from Subcontractor's Work. If Storm Water Protection measures are disturbed by the Subcontractor, Subcontractor shall immediately re-install such measures to their original condition;
- .6 In addition to Subcontractor's own quality assurance processes, participate in Contractor's Quality Management System;
- .7 Provide hoisting to point of installation for all Subcontractor activities related to off-loading and hoisting of materials and equipment; and
- .8 Fully cooperate with third party testing and inspection agencies and permit the testing agency adequate time and notice to inspect all completed Work.

§ 10.14 Professional Services. If the Subcontractor is required by the Contract Documents to provide professional services that constitute the practice of architecture or engineering or if the Subcontractor is required to provide such services in order to carry out the Subcontractor's responsibilities for its own construction means, methods, techniques, sequences, and procedures, then the Subcontractor shall cause the professional services to be provided by a properly licensed design professional (hereinafter "**Design Consultant**" or "**Subcontractor's Design Consultant**"), if required by the jurisdiction where the Work will be performed, whose signature shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals prepared by such professional. Subcontractor shall provide and cause its Design Consultant to provide any professional services consistent with the professional skill and care ordinarily provided by design or engineering professionals practicing in the same or similar locality under the same or similar circumstances, and who have experience on projects of a similar size, character, and budget to that of the project. If the Contract Documents require the Subcontractor's Design Consultant to certify that the Work has been performed in accordance with design criteria, the Subcontractor shall furnish such certification to the Contractor or Owner at the time and in the form specified by the Contractor or Owner. The Contractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by Subcontractor's design professionals; Subcontractor shall likewise be responsible for and liable for the services provided by Subcontractor's design professionals, regardless of tier, including without limitation errors, omissions, negligent acts and/or misconduct.

§ 10.14.1 To the extent that the Prime Contract controls ownership and use of any part of the Contract Documents, including any documents or data created by Subcontractor or design professionals retained by Subcontractor, the Prime Contract shall govern such ownership and use. Subcontractor, on behalf of itself and the Subcontractor's Design Consultants, hereby agrees to be bound by such terms and conditions. If the Prime Contract does not control ownership and use of the Contract Documents, including any data and documents created by Subcontractor or Subcontractor's Design Consultants, Subcontractor and its Design Consultants agree that all reports, drawings, data sheets, recommendations, photographs, computer print-outs, design criterion, calculations and materials of a similar nature covered by payments hereunder are the property of Contractor and as such are not to be revealed or distributed to other parties, except as otherwise directed by Contractor in writing.

§ 10.14.2 Subcontractor shall provide the results and reports of tests, inspections, or investigations conducted for the project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials or environmental and subsurface conditions; and information regarding the presence of pollutants at the project site. Such tests and inspection include without limitation: fire hydrant flow tests; locating of existing utilities; electrical panel metering; infrared testing of electrical panels; testing of transfer switches; energy code survey and compliance; preliminary T&B; chiller testing and verification; boiler certifications and testing results; fire sprinkler survey; fire alarm and damper testing; or building envelop survey.

§ 10.15 Subcontractor's Representative. Subcontractor shall designate in writing one or more persons who shall be the authorized Subcontractor's representative(s) on site and off site. Such authorized representative(s) shall be the only person(s) to whom the Contractor shall issue instructions, orders, or directions, except in an emergency. Subcontractor shall not remove an authorized Subcontractor representative from the project without the express written consent of

Contractor. Subcontractor shall replace any such Subcontractor representative to whom the Contractor objects at any time during the progress of the Work.

§ 10.16 Laws and Permits. Subcontractor shall comply with all federal, state, and local laws and ordinances applying to the building or structure and comply and give adequate notices relating to the Work to proper authorities and to secure and pay for all necessary licenses or permits to carry on the Work as described in the Contract Documents applicable to this Contract.

§ 10.17 Taxes. Subcontractor shall comply with federal, state, and local tax laws, social security laws, and unemployment compensation laws and Worker's Compensation laws insofar as applicable to the performance of this Contract. Subcontractor shall pay all sales, use and similar taxes applicable to the Work, and such taxes are included in the Contract Sum unless otherwise provided in the Project Contract.

§ 10.18 Approval of Work. Subcontractor shall perform all Work subject to the final approval of the Contractor and the Architect or Owner's authorized agent.

§ 10.19 Financial Information. Subcontractor shall be entitled to receive from the Contractor, upon Subcontractor's written request, such information as the Contractor has obtained relative to the Owner's financial ability to pay for the contract between the Contractor and the Owner, if Subcontractor executes a mutually agreeable non-disclosure/confidentiality agreement. Subcontractor shall provide to Contractor, upon request, information relative to the Subcontractor's financial ability to comply with the terms and conditions of the Contract Documents. Failure to provide such information may be deemed Subcontractor default.

§ 10.20 Communications by Subcontractor. Unless otherwise provided in the Contract Documents, Subcontractor shall communicate by and with the Owner, Architect, engineer, consultants, separate contractors or other subcontractors and suppliers of Contractor, regardless of tier, only through the Contractor.

§ 10.21 Substitutions. Subcontractor shall make no substitutions in the Work unless permitted in the Contract Documents and only then upon the Subcontractor first receiving all approvals required under the Contract Documents for substitutions. Requests for substitution when submitted by Subcontractor to Contractor are understood to mean that Subcontractor: (a) represents that it has investigated the proposed substitute material or equipment and determined that it is equal or superior in all respects to that specified; (b) will provide the same guarantee for the material to be substituted that Subcontractor would for that specified; (c) warrants that the cost data presented is complete and includes all related costs and that Subcontractor waives all claims for and agrees to indemnify Contractor and Owner against any and all additional costs related to the substitution which subsequently become apparent; and (d) will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects. If a substitution results in additional costs to Contractor or any other subcontractor or a supplier of Contractor, Subcontractor shall promptly pay said costs for its own account, or Contractor may setoff or recoup such additional costs against any payment due Subcontractor.

§ 10.22 Correction of Work. Subcontractor shall correct in a timely fashion any Work rejected by the Contractor or Owner for failing to comply with the Contract Documents, whether observed prior to the commencement of the warranty period(s) or during the warranty period(s) established by the Contract Documents. The Subcontractor shall make corrections at its own cost and time and bear the expense of additional services for any nonconforming Work for which it is responsible. Subcontractor shall clean up debris and repair the Work so the repairs cannot be noticed.

§ 10.23 Hazardous Substances. In the event Subcontractor encounters asbestos, lead, polychlorinated biphenyl (PCB) or other hazardous substances at a project site that are potentially harmful to persons or property, Subcontractor shall take all steps required by the Contract Documents and by law to protect persons and property from injury or damage, including stopping the Work in the affected areas and promptly advising the Contractor in writing of the conditions encountered at the site. Should the Subcontractor be required to stop work in any area of the project as a result of hazardous substances located at the project site, then the Subcontractor shall not resume its Work in the affected area until (a) the hazardous substances have been removed or made harmless; (b) the Contractor and Subcontractor agree in writing to commence work in all or a portion of the area; (c) the Owner orders the Work to proceed in the affected area, and the parties agree; or (d) the dispute is resolved as provided for in this Contract. The Subcontractor shall not be required to perform work in areas containing asbestos, lead, PCBs, or any other hazardous substances defined by the Contract Documents, without the Subcontractor's consent.

§ 10.24 Hazardous Materials Communications Program. A written Hazardous Materials Communications Program, including Safety Data Sheets (SDSs) as required by law and pertaining to materials or substances used or consumed in

the performance of the Work, shall be submitted to the Contractor by the Subcontractor. SDSs obtained by the Contractor from other subcontractors or sources shall be made available to the Subcontractor by the Contractor upon request.

§ 10.25 Notice of Delays. Unless a shorter notice period is set forth in the Prime Contract, Subcontractor shall notify Contractor in writing within five (5) days of first discovering or becoming aware of a condition caused by Contractor or Owner that will cause any delays to the Work.

§ 10.26 Liens. Subcontractor shall keep the project free of all liens of sub-subcontractors, suppliers and/or others furnishing labor or material to Subcontractor for the project.

§ 10.27 Prevailing Wages. Subcontractor shall comply with any and all prevailing wage laws and applicable laws, rules, and regulations governing the Subcontractor's Work, licensure, and certifications.

§ 10.28 Payment Conditions. Upon acceptance of the Work by Owner and receipt of funds from the Owner, the Contractor shall pay Subcontractor within ten (10) days, unless otherwise provided in the Contract Documents or required by law, upon the payment by Owner to Contractor pursuant to certificates issued under Contractor's Schedule of Values, or as described in Article 4 herein. The amount of the payment shall be equal to the amount allowed to Contractor on account of Subcontractor's Work. However, Contractor may reduce or hold payment if Subcontractor is not in compliance with any provision of the Contract Documents on any project performed for Contractor. Except where prohibited by law, no payment from Contractor to Subcontractor shall be due unless Contractor receives payment from Owner for the work of the Subcontractor. Subject to the provisions of Section 10.30, Subcontractor expressly agrees to accept the risk that it will not be paid for the Work performed by it in the event that Contractor is not paid by Owner for such Work.

§ 10.29 Percentages of Completion. Contractor shall permit Subcontractor to obtain directly from the Architect or Owner's authorized agent, evidence of percentages of completion certified on its account.

§ 10.30 Right to Demand Payment. Contractor shall pay Subcontractor within ten (10) days after written demand if the failure of the Owner or its authorized agent to issue payment is due to any fault of the Contractor and is not due to the fault of the Subcontractor, its sub-subcontractors or suppliers of any tier, or anyone for whose actions Subcontractor is responsible.

§ 10.31 Right to Stop Work. Contractor agrees that Subcontractor may, upon seven (7) days' advance written notice to the Contractor, stop Work without prejudice to any other remedy if Contractor fails to make payments to Subcontractor within ten (10) days' from Contractor's receipt of payment from the Owner or from the time payment should have been made as provided in Articles 4, 5 and 10 for any cause not the fault of Subcontractor, its sub-subcontractors, or suppliers of any tier, or anyone for whose actions Subcontractor is responsible.

§ 10.32 Communications by Contractor. Contractor shall not issue or give any instructions, order, or directions directly to employees or workers of Subcontractor other than to the persons designated as the authorized representative(s) of the Subcontractor.

ARTICLE 11 DISPUTES.

§ 11.1 Disputes Involving Owner. Any dispute resolution procedure in the Prime Contract is hereby incorporated into this Contract and shall apply to any disputes arising under any of the Contract Documents that involve the acts, or omissions of Owner or that are otherwise the responsibility of Owner under the Prime Contract ("**Owner Disputes**"). With respect to Owner Disputes, Contractor's sole obligation is to present any timely filed claims by Subcontractor to Owner under such procedure, and to pay to Subcontractor the proportionate part of any sums paid by Owner to which Subcontractor is entitled hereunder.

§ 11.2 Direct Discussions and Mediation. Subject to Section 11.1, Contractor and Subcontractor agree if a dispute arises out of or relates to this Contract, or the breach thereof, the parties shall endeavor to resolve the dispute first through direct discussions between the parties' representatives who possess the necessary authority to resolve such matter. If the dispute cannot be resolved through direct discussions within fifteen (15) days of the first discussion, the parties shall endeavor to resolve the dispute by mediation before recourse to binding arbitration. Mediation is a condition precedent to binding arbitration. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 11.3 Arbitration. Subject to Section 11.1, the parties further agree that any controversy, dispute, or claim arising out of or related to this Contract, or breach thereof, that is not resolved through direct discussions or mediation shall be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry

Arbitration Rules and Mediation Procedures (including Procedures for Large, Complex Construction Disputes). A party's request for mediation may be made concurrently with the filing of arbitration proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or by order of the arbitrator. If any arbitration is stayed pursuant to this section, the parties may nonetheless proceed to the selection of arbitrator(s) and agree upon a schedule for later proceedings. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action was filed within the applicable statute of limitations.

§ 11.3.1 Arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. Section 1, *et seq.*, notwithstanding any state laws on the topic. Unless prohibited by law, any mediation or arbitration shall be held at a location in Faulkner County, Arkansas and the substantive law of the jurisdiction identified in Article 14.5 of this Contract shall apply.

§ 11.3.2 If the amount in dispute is less than \$50,000 (exclusive of attorneys' fees), there shall be no discovery other than the exchange of relevant documents. The parties agree that the failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges shall constitute a waiver by that party to present evidence or cross-examine witnesses at any arbitration hearing. Notwithstanding any language to the contrary in the Contract Documents, the parties hereby agree as follows: that the underlying award may be appealed pursuant to the AAA's Optional Appellate Arbitration Rules (Appellate Rules); that the underlying award rendered by the arbitrator(s) shall, at a minimum, be a reasoned award; and that the underlying award shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired. Appeals must be initiated within 30 days of receipt of an underlying award, as defined by Rule A-3 of the Appellate Rules, by filing a Notice of Appeal with any AAA office. Following the appeal process the decision rendered by the appeal tribunal may be entered in any court having jurisdiction thereof.

§ 11.4 Consolidation. To the extent not prohibited by the Prime Contract or by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor, and other subcontractors, suppliers, and/or material suppliers involving a common question of law or fact shall be heard by the same mediators or arbitrators in a single proceeding. In this event, it shall be the responsibility of Subcontractor to prepare and present Subcontractor's case to the extent the proceedings are related to the Subcontractor's Work. If Contractor is a party to litigation, arbitration or mediation with Owner or others regarding matters relating to the Subcontractor's Work, Subcontractor shall be bound by the result of such proceedings to the same degree as Contractor.

§ 11.5 Claims. A "**Claim**" is a demand or assertion by the Contractor or the Subcontractor seeking, as a matter of right, payment of money, an adjustment in the Contract Sum or Schedule of Work, an adjustment to or interpretation of the Contract terms, or other relief arising under or relating to this Contract, including the resolution of any matters in dispute between the Contractor and Subcontractor in connection with any project. Nothing herein shall require Contractor to file a Claim in order to impose or collect liquidated, consequential, or other damages for delay in accordance with the Contract Documents.

§ 11.6 Timely Submission of Claims. The Subcontractor agrees to make all Claims against the Contractor for which the Owner is or may be liable in the same manner and within time allowed for the Contractor to make claims against the Owner after the event giving rise to the claim occurs, and in sufficient time for the Contractor to make such claims against the Owner. Such claims shall be made in writing and comply with this paragraph to be valid. When Contractor pursues a claim against the Owner or its agents that incorporates any Claim on behalf of Subcontractor, each party shall pay the fees of any mediator or arbitrator and the cost of the dispute resolution proceedings in proportion to the amount of the party's respective claim.

§ 11.6.1 The Subcontractor shall give the Contractor written notice of all Claims not included in the foregoing paragraph within seven (7) calendar days of the date when the Subcontractor knew of the facts giving rise to the event for which the Claim is made; otherwise, such Claims shall not be valid.

§ 11.7 Continuing Contract Performance. The Subcontractor shall carry on the Work and maintain the Schedule of Work pending final resolution of a Claim, including arbitration, unless the Subcontractor has been terminated or the Work suspended as provided for in the Contract, or the parties otherwise agree in writing to a partial or total suspension of the Work. If the Subcontractor is continuing to perform in accordance with this Contract, the Contractor may continue to make undisputed payments in accordance with the terms of the Contract.

§ 11.8 Damages for Delay. If the Contract Documents provide for liquidated, consequential, or other damages for delay beyond the completion date set forth in the Contract Documents, and such damages are assessed or appear may be assessed by the Owner against the Contractor, then the Contractor, in its sole discretion, may assess and apportion

such damages against the Subcontractor in proportion to Subcontractor's share of the responsibility for such delay and damage, but no more. The amount of such assessment against the Subcontractor, if any, shall not exceed the Subcontractor's proportionate share of the responsibility for such delay and damage and shall never exceed the amount assessed against the Contractor by the Owner or otherwise provided for in the Contract Documents. Nothing in this paragraph shall limit the Contractor's right to actual damages sustained by the Contractor as a result of the Subcontractor's delay. The payment of such damages shall not release Subcontractor from its obligation to otherwise fully perform the Work.

ARTICLE 12 SUBCONTRACTOR DEFAULT AND CONTRACTOR'S REMEDIES.

§ 12.1 Subcontractor Default. If the Subcontractor (a) refuses or fails (i) to correct any Work rejected by the Contractor or Owner, (ii) to supply enough properly skilled workers, proper materials, or maintain the Schedule of Work, or (iii) to make prompt payment to workers, subcontractors, or suppliers; or (b) disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or (c) Contractor receives evidence that Subcontractor is not timely in paying obligations related to the project; or (d) a petition in bankruptcy or for an arrangement or reorganization is filed by or against the Subcontractor; or (e) Subcontractor becomes insolvent or is adjudicated bankrupt or goes into a liquidation or dissolution, either voluntarily or involuntarily or under court order; or (f) Subcontractor makes a general assignment for the benefit of creditors or otherwise acknowledges insolvency; or (g) is convicted of a felony; or (h) is sixty (60) days or more delinquent in paying applicable union dues and benefits payments; or (i) is otherwise guilty of a material breach of a provision of this Contract, the Subcontractor may be deemed in default of this Contract.

§ 12.2 Seventy-Two Hour Notice. If the Subcontractor fails within seventy-two (72) hours after written notification to commence and continue satisfactory correction of such default, then the Contractor, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

- .1 supply such number of workers and quantity of materials, equipment, and other facilities as the Contractor deems necessary for the satisfactory correction of such default, which the Subcontractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to the Subcontractor, who shall be liable for the payment of same, including reasonable overhead, profit, and attorneys' fees;
- .2 contract with one or more additional contractors, to perform such part of the Work as the Contractor shall determine will provide the most expeditious correction of the default and charge the cost thereof to the Subcontractor; and
- .3 withhold payment, in the amount deemed necessary by the Contractor, of moneys due the Subcontractor in accordance with this Contract.

§ 12.3 Contractor Remedies. If the Subcontractor fails to commence and satisfactorily continue to cure correction of a default after seventy-two (72) hours written notification issued under paragraph 12.2 then the Contractor may, in lieu of or in addition to the remedies set forth in this numbered paragraph, issue a written notice of termination to the Subcontractor and terminate the Project Contract and, in the discretion of the Contractor, terminate this Contract and any other Project Contract between Contractor and Subcontractor. Subcontractor acknowledges that any default by Subcontractor will frustrate or impair Contractor's work on the project, and a subsequent default will not be tolerated after the initial default and notice. Accordingly, any notice issued by Contractor per Section 12.2 above may, in the sole discretion of Contractor, be treated as continuing in nature if the default of Subcontractor persists or continues after the initial notice (even if temporarily cured within the initial notice period), and Contractor may at any time exercise any rights or remedies available under this Article 12.3 without the necessity of additional notice to Subcontractor. No delay or forbearance by Contractor in exercising any right or remedy shall be deemed or construed as a waiver of the right to subsequently exercise the right or remedy.

§ 12.4 Emergencies. In the event of an emergency affecting the safety of persons or property, the Contractor may proceed to commence and continue satisfactory correction of such default, without first giving seventy-two (72) hours written notice to the Subcontractor but shall thereafter give prompt written notice of such action to the Subcontractor. In the event the default is of such a nature that it cannot be cured for any reason within 72 hours, including, but not limited to: (i) Subcontractor has abandoned the project, (ii) Subcontractor has informed Contractor that it will not cure the default, or (iii) the default cannot legally be cured by Subcontractor within seventy-two (72) hours, then Contractor may proceed to correct such default without first giving seventy-two (72) hours written notice to the Subcontractor.

§ 12.5 Costs and Expenses. All costs incurred by the Contractor in performing, completing, or correcting the Work, including reasonable overhead, profit, and attorneys' fees, shall be deducted from any moneys due or to become due the Subcontractor under this Contract. The Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Sum. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Work, such excess shall be paid to the Subcontractor.

§ 12.6 Materials and Equipment. If the Contractor performs the Work under this Article, or subcontracts such work to be so performed, the Contractor and/or the persons to whom the Work has been subcontracted shall have the right to take and use any materials, implements, equipment, appliances, or tools furnished by, belonging to, or delivered to the Subcontractor and located at the project for the purpose of completing any remaining Work. Immediately upon completion of the Work, any remaining materials, implements, equipment, appliances, or tools not consumed or incorporated in performance of the Work, and furnished by, belonging to, or delivered to the project by or on behalf of the Subcontractor, shall be returned to the Subcontractor in substantially the same condition as when they were taken, normal wear and tear excepted.

§ 12.7 Supplementation. If Subcontractor fails at any time to furnish or supply sufficient skilled workers, suitable materials, supplies, or adequate equipment, Contractor shall have the right, in addition and without prejudice to the exercise of any other remedies, to expedite deliveries of and to procure and furnish such labor, materials, supplies, or equipment and charge the entire cost of expediting, procuring, or furnishing the same, including Contractor's reasonable overhead, profit and all legal, professional, and consultant fees incurred in connection therewith, to Subcontractor and deduct such amounts from any amount payable to Subcontractor, or, upon Contractor's demand, Subcontractor agrees to immediately pay Contractor all such fees, costs, and expenses.

ARTICLE 13 TERMINATION OR SUSPENSION OF THE CONTRACT.

§ 13.1 Termination for Convenience. Contractor may terminate any Project Contract, in whole or in part, for Contractor's convenience and without cause, upon five (5) days written notice to Subcontractor. In the event the agreement between Contractor and Owner is terminated for convenience, Contractor shall be obligated to pay Subcontractor only such compensation as Contractor receives from Owner for Subcontractor's Work, less any applicable back-charges, deducts, credits, or offsets. Otherwise, upon termination for convenience, Contractor shall pay Subcontractor for Work performed in accordance with the Contract Documents to the date of termination, based upon the Contract Sum, plus any unavoidable, direct costs of termination, less applicable back-charges, deducts, credits, or offsets. In the event any termination for cause is found to be wrongful or otherwise without justification, such termination shall be deemed a termination for convenience hereunder, and Subcontractor shall be compensated as provided herein. In no event shall Subcontractor be entitled to recover lost or anticipated profits or unrecovered overhead on work not performed. The compensation provided for herein shall be Subcontractor's sole and exclusive remedy arising out of a termination for convenience or a deemed termination for convenience.

§ 13.2 Suspension of the Work. The Contractor may, with or without cause, order the Subcontractor to suspend, delay, or interrupt the Work in whole or in part for such period as the Contractor may determine in its sole discretion. In the event of suspension ordered by the Contractor without cause, the Subcontractor may request an equitable adjustment of the Contract Sum and Schedule of Work for increases in the cost and time caused by such suspension, delay, or interruption, as determined in the sole discretion of Contractor. No adjustment shall be made to the extent that:

- .1 performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Subcontractor is responsible; or
- .2 an equitable adjustment is made or denied under another provision of this Contract or the Contract Documents.

ARTICLE 14. MISCELLANEOUS.

§ 14.1 Severability. This Contract is severable, and any part deemed unenforceable shall not render the remaining parts unenforceable. If it is determined that any provision of this Contract violates any law or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case, this Contract shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 14.2 Public Policy. All covenants of this Contract shall be subject to all federal, state, and local laws, executive orders, rules, or regulations, and the parties shall not be held liable in damages, for a failure to comply with this Contract, if compliance is prevented by, or if such failure is the result of any such law, order, rule, or regulation.

§ 14.3 Merger. This Contract, as supplemented by a Project Contract, is intended to be the final and complete expression of the parties with reference to that specific Project Contract, and there are no other written or oral agreements relating to the subject matter thereof. This Contract may only be amended by a further written agreement signed by the parties.

§ 14.4 Review by Counsel. The parties agree that they and their legal counsel have each had the opportunity to review the Contract and that any rule of construction to the effect that ambiguities may be resolved against the drafting party shall not apply to this Contract.

§ 14.5 Governing Law. The laws of the State of Arkansas shall apply to the interpretation, construction, and enforcement of this Contract, without giving effect to principles of conflict laws to the contrary. Subcontractor acknowledges that Contractor is an Arkansas corporation and maintains its principal place of business in Arkansas. Notwithstanding, the laws of the state in which the project is located shall apply when the law of the state in which the project is performed requires.

§ 14.6 Notices. Any written notice required by this Contract shall be effective, if given by email, commercial delivery service providing proof of delivery, or United States Postal Service when transmitted or when placed in the possession of the private carrier or United States Postal Service and appropriate arrangements for payment have been made. Notice may be given to either the Subcontractor or the Subcontractor's Representative at the addresses or email appearing on each Project Contract. If such address or email is not provided, notice shall be effective, if directed to the Subcontractor's address or email appearing in this Contract. Notice to the Contractor shall be directed to Contractor at the address appearing on the first page of this Contract and to the Contractor's Representative at the address and email appearing on the Project Contract. A copy of any notice to Contractor must be sent via email to legal@nabholz.com.

§ 14.7 Subheadings. Subheadings are descriptive only and do not modify or amend the language.

§ 14.8 Jurisdiction and Venue. Unless prohibited by law, personal jurisdiction and venue for any arbitration or litigation shall be Conway, Faulkner County, Arkansas, exclusively.

§ 14.9 Assignment to Owner. Contractor may assign this Contract and the Project Contract to the Owner if required by the Prime Contract. In the event of a termination of the Prime Contract for any reason, this Contract may, at the sole option of the Owner or its lender providing construction financing, be assigned to the Owner or any lender providing construction financing or assigned to another contractor, and the Subcontractor shall continue to work as though this Contract was with the assignee. Said assignment shall become effective only upon written notice by the Owner or such lender that the Owner or such other contractor is assuming this Subcontract. The Subcontractor shall execute any instruments necessary to confirm such assignment. By executing this Contract, the Subcontractor confirms and assents to the aforementioned rights of assignment and assumption.

§ 14.9.1 No Assignment by Subcontractor. To the fullest extent permitted by law, Subcontractor agrees that it shall not assign, sell, transfer, delegate, or encumber any rights, duties, or obligations arising under this Contract, including, but not limited to, any right to receive payments hereunder, without the prior written consent of Contractor in Contractor's sole and reasonable discretion, and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. In the event Subcontractor assigns, purports to assign, sells, encumbers or otherwise transfers its right to any monies due or to become due under this Contract as security for any loan, financing, or other indebtedness (hereinafter "**Assignment**"), notification to Contractor of such Assignment must be sent by certified mail, return receipt requested, to the Nabholz Controller, and the Assignment shall not be effective as against Contractor until Contractor provides its written consent to such Assignment. Subcontractor agrees that any such Assignment shall not relieve the Subcontractor of any of its agreements, duties, responsibilities, or obligations under this Contract and the Contract Documents and shall not create a contractual relationship or a third-party beneficiary relationship of any kind between Contractor and such assignee or transferee. Subcontractor further agrees that all Contractor's defenses and claims arising out of this Contract with respect to such Assignment are reserved unless expressly waived in writing by a duly authorized corporate officer. Subcontractor hereby agrees to indemnify and hold harmless Contractor from and against any and all loss, cost, expense, or damages Contractor or Owner has or may sustain or incur in connection with such Assignment.

§ 14.10 Setoff and Offset. Contractor has the right to offset or set off against other Project Contracts or any other obligations owed to Contractor by Subcontractor. Contractor has and reserves any rights or defenses of recoupment.

§ 14.11 No Implied Waivers. No failure on the part of Contractor to exercise and no delay in exercising any right or remedy under this Contract will operate to waive that right or remedy. All waivers and consents by Contractor must be in writing and signed by Contractor to be effective. No waiver or consent given by Contractor in connection with this Contract will apply to any events, acts or circumstances other than those expressly covered by that specific written waiver or consent.

§ 14.12 Confidentiality. Subcontractor acknowledges that certain information provided to it by Contractor or Owner contains information deemed trade secret or proprietary to Contractor or Owner. Subcontractor shall not, unless prior written authorization is provided by Contractor, use, or disclose to any person any of the Owner's or Contractor's trade secrets or confidential information to any third parties. This restriction will not apply to trade secrets or confidential

information that becomes public other than through unauthorized use or disclosure by Subcontractor. Subcontractor will use its best efforts to prevent the unauthorized use or disclosure of such information. Such information includes but is not limited to Contractor's or Owner's research, development, method, process, or commercial information, including value engineering and constructability studies; current and prospective clients, subcontractors, and/or competitors; proposals and sales reports; methods, processes, techniques, operations, marketing programs, computer programs (including its licensing and costs), future plans, growth expectations, pricing/price modeling, logistics, and specific strategies; and financial data of Contractor, Owner, their subsidiaries, operating business units and affiliated companies.

§ 14.13 Force Majeure. If the Subcontractor is delayed at any time in the progress of its Work by acts of God, labor strikes away from the project location, fire, tornado, hurricane, flood, earthquake, war, act of terrorism, civil disturbance, and unavoidable casualties or other causes beyond the Subcontractor's control, or by other causes which Contractor reasonably determines may justify delay, then the Subcontractor may submit a request for an extension by change order for such reasonable time as the Contractor may determine, in accordance with the Contract Documents. Subcontractor's only remedy for force majeure events shall be an extension of time as provided in the Contract Documents, and Subcontractor shall not be entitled to additional compensation unless otherwise specifically provided, and only to the extent permitted, by Contractor's agreement with Owner. Subcontractor shall have the burden of proving the impact of the delay and justifying the time extension requested.

§ 14.14 Survival; Binding Effect. The rights and obligations of the parties set forth in Sections 10.7, 10.8, Article 8, and Section 14.12, and any right or obligation of the parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns.

§ 14.15 General Compliance with Owner corporate Policies and Procedures. Subcontractor shall cause its employees to abide by all corporate policies and procedures as provided by Owner, including without limitation policies regarding background checks for personnel or health and safety policies. Failure to comply with said policies and procedures could result in removal and prohibition from Owner's premises.

§ 14.16 Counterparts and Electronic Signatures. This Contract may be executed in one or more counterparts, each of which is an original, and all of which together constitute only one agreement between the parties. Each party agrees that electronic signatures, whether digital or encrypted, of the parties included in this Contract are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent and authority to sign such record, including facsimile or email electronic signatures.

§ 14.17 When website links are used to incorporate documents. Where indicated, and when allowed by applicable law, exhibits are found on the Contractor's website as indicated. It shall be Subcontractor's responsibility to review such exhibits for any updates and revisions and it is further agreed that any updated or revised exhibits shall be deemed to be an amendment to the exhibits and incorporated by reference without the need to follow any further notice procedure or agreement of the parties. Contractor will, at Subcontractor's written request, provide Subcontractor with electronic or paper copies of the exhibits that are referenced as incorporated documents but not included in writing with the Exhibits to this Contract or Project Contract.

§ 14.18 Federal Contracts. Attachment B found at www.nabholz.com/suppliers/po-attachment-b.pdf applies to Project Contracts issued under U.S. Government contracts, grants, and projects receiving federal assistance as defined by federal law, executive order, or regulation.

§ 14.19 Vaccination and Testing. At Subcontractor's sole cost and expense, Subcontractor shall comply with any vaccine or testing protocols for infectious diseases as mandated by Owner or any governmental entity.

§ 14.20 Independent Contractor. The relationship of the parties to this Agreement is that of contractor and independent contractor and not that of principal and agent, employer and employee, partners, or joint venturers. Subcontractor agrees that it is an independent contractor in the performance of any Work under the Contract Documents and that neither it nor its employees shall be considered employees of Contractor.

§ 14.21 Attorney Fees. Should Contractor employ an attorney to enforce any of the provisions hereof, or protect its interest in any matter arising under this Contract, or to collect damages for the breach of this Contract, or to prosecute or defend any suit resulting from this Contract, or to recover on the surety bond given by Subcontractor under this Contract,

then Subcontractor and his surety, jointly and severally, agree to pay Contractor all reasonable costs, charges, expenses and attorney fees expended or incurred in connection therewith.

IN WITNESS WHEREOF, the parties hereto have executed this Contract under the seal, the day and year first above written.

Subcontractor's Name
(Subcontractor)

Nabholz Construction Corporation
(Contractor)

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SAMPLE