



AIA® Document A401™ – 2017

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the ____ day of _____ in the year ____
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Catalyst Construction Management, Inc.
5158 E. 65th Street
Indianapolis, IN 46220

and the Subcontractor:
(Name, legal status, address and other information)

The Contractor has made a contract for construction (hereinafter, the Prime Contract)
dated: See Project Purchase Order

with the Owner:
(Name, legal status, address and other information)

See Project Purchase Order

for the following Project:
(Name, location and detailed description)

See Project Purchase Order

which Contract is hereinafter referred to as the Prime Contract and which provides for the
furnishing of labor, materials, equipment and services in connection with the construction
of the Project. A copy of the Prime Contract, consisting of the Agreement Between
Owner and Contractor (from which compensation amounts may be deleted) and the other
Contract Documents enumerated therein has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

See Project Purchase Order

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference.

Init.

The Contractor and the Subcontractor agree as follows.

This Agreement serves as a "Master Subcontract" as between the Contractor and Subcontractor to establish the general terms, conditions, rights, duties and obligations of the parties that will apply should the Contractor and Subcontractor hereafter enter into a written Project Purchase Order (hereafter "Purchase Order") with respect to a particular Project. On a Project-by-Project basis the Contractor shall have the discretion to solicit a quote or proposal from the Subcontractor with respect to a potential Project and the Subcontractor shall have the discretion of whether to provide such quote or proposal. In order for the Contractor and Subcontractor to be bound to one another under the terms of this Agreement for any particular Project, both the Contractor and Subcontractor must agree to and execute a Purchase Order specific to that Project. The general form of the Purchase Order is attached hereto as Exhibit A. The Contractor has no obligation to retain the Subcontractor for any particular Project or to make any payment to Subcontractor with respect to any Project, unless and until Contractor and Subcontractor execute a Purchase Order for that Project. Each Purchase Order hereafter executed by the parties shall apply only to the specific Project as referenced therein. Each Purchase Order issued by the Contractor and accepted by the Subcontractor shall incorporate all of the terms and conditions of this Agreement, in addition to the terms and conditions as expressly reflected in the Purchase Order. Each Purchase Order hereafter executed by the parties shall be read in conjunction with this Agreement in defining and governing the rights, duties and obligations of the parties with respect to the Project covered by that Purchase Order. In the event of any conflict as between the terms and conditions of this Agreement and the terms and conditions of a Purchase Order, the Purchase Order shall take precedence and control over this Agreement.

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Purchase Order applicable to the Project; (3) all plans and specifications applicable to Subcontractor's Work; (4) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (5) Modifications to the Prime Contract, whether issued before or after the execution of this Agreement, in accordance with the provisions of Article 5; (6) other documents listed in Article 15 of this Agreement; and (7) Modifications to this Subcontract issued after execution of this Agreement, in accordance with the provisions of Article 5. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein.

§ 1.2 The Subcontract Documents form the Subcontract for Construction. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications to the Prime Contract or Modifications to this Subcontract issued subsequent to the execution of this Agreement, or the Purchase Order applicable to the Project, appears in Article 15. The Subcontract Documents are complementary and what is required by any one shall be as binding as if required by all. The Subcontract Documents shall be deemed to include and require all items and aspects of labor, material, equipment, services and transportation as expressly specified therein and as reasonably inferable therefrom, incidental to or necessary for the proper execution and completion of the Subcontractor's Work as it relates to the Project. Prior to executing a Purchase Order the Subcontractor agrees that it shall thoroughly and carefully examine all Subcontract Documents applicable to that Project, inspect the site of the Project and acquaint itself with the characteristics and other conditions which will apply to its Work on that Project. By executing a Purchase Order for that Project, the Subcontractor shall acknowledge that the Subcontract Documents are suitable for said Work, sufficient for their intended purposes and the Subcontractor shall thereby agree and commit to properly perform the Work and complete the same in full and strict compliance with the Subcontract Documents and to the satisfaction of the Contractor, Owner and Architect.

§ 1.3 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the General and/or Supplemental Conditions to the Prime Contract. In the event there are no General and/or Supplemental Conditions to the Prime Contract, then AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, shall constitute the General Conditions.

§ 1.4 The Subcontract may be amended or modified only by a Modification to this Subcontract or a Purchase Order. A Modification to this Subcontract is a written amendment to this Agreement signed by both parties, or as otherwise described in, and in accordance with the provisions of, Article 5.

§ 1.5 The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.6 The Contractor shall make the Subcontract Documents available to the Subcontractor prior to execution of this Agreement, and thereafter, upon request. The Contractor may charge the Subcontractor for the reasonable cost to reproduce the Subcontract Documents provided to the Subcontractor.

ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of General Conditions apply to this Agreement pursuant to Section 1.3 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities that the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies, and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies, and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract.

Notwithstanding the above, to the extent there is any conflict between the terms and conditions of this Agreement and the applicable Purchase Order, on the one hand, and the terms and conditions found in other Subcontract Documents, on the other hand, then the terms and conditions of this Agreement and the applicable Purchase Order shall take precedence over the terms and conditions of the other Subcontract Documents and shall define and control the rights, duties and obligations which exist as between the Contractor and Subcontractor.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all Project matters requiring the Contractor's approval or authorization. The term "Contractor" means the Contractor or the Contractor's authorized representative.

(Paragraph Deleted)

§ 3.2 Services Provided by the Contractor

§ 3.2.1 The Contractor shall confer with the Subcontractor in scheduling and performing the Contractor's Work in an effort to avoid where reasonably possible conflicts or interference in the Subcontractor's Work and shall review, and expedite written responses to, submittals made by the Subcontractor in accordance with Section 4.2.3 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor with copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.2.2 The Contractor shall designate suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Except as previously agreed upon, additional costs to the Subcontractor resulting

from repeated relocation of such storage areas at the direction of the Contractor shall be reimbursed by the Contractor. Subcontractor will be responsible for securing its equipment and materials on the jobsite, as well as protecting such equipment and materials from damage or theft.

§ 3.2.3 Subcontractor shall be responsible for unloading, storing, hoisting and installing all of its equipment and materials in a manner to ensure timely completion of Subcontractor's Work and shall provide all temporary facilities and services necessary to complete its Work in accordance with the Subcontract Documents and as required by weather and other conditions at the Project site. The Contractor shall not be responsible for providing any temporary facilities, equipment or services necessary for the Subcontractor to complete its Work, except as may be specifically agreed in writing. In the event the Contractor allows the Subcontractor to use temporary facilities, equipment or services of the Contractor, the Subcontractor agrees and acknowledges that such items are provided by the Contractor "AS-IS," without any warranty or representation, and Subcontractor, in consideration for its use of such items, shall release, indemnify and hold the Contractor harmless as to any liability, claims, costs and expenses, including reasonable attorneys' fees, arising from or relating to the Subcontractor's use of such items.

§ 3.3 Communications

§ 3.3.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects the performance of this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.3.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.3.3 The Contractor shall permit the Subcontractor to request information directly from the Architect regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.3.4 If hazardous materials or substances are being used on the site by the Contractor, a subcontractor, or anyone directly or indirectly employed by them (other than the Subcontractor), and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the party using such substance, prior to delivery to the Project site or exposure of the Subcontractor's employees to such material or substance, shall be required to give notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.3.5 All drawings, specifications and items defined herein as Subcontract Documents which have been prepared for the Project and furnished to Contractor by or on behalf of the Owner, Architect or other third party, are without any representation or warranty by Contractor as to the acceptability, accuracy or suitability thereof for the Work. Contractor shall only be liable to Subcontractor for any deficiencies, errors or omissions contained therein, to the extent the Owner is first adjudged liable to the Contractor and then limited to the amount of recovery which Contractor obtains from the Owner that is applicable to the Subcontractor's Work.

§ 3.3.6 If the Contractor asserts a Claim against, or defends a Claim by, the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the Claim that relates to the Work of the Subcontractor.

§ 3.4 Claims by the Contractor

§ 3.4.1 If Subcontractor is responsible for any delay in the prosecution or completion of any Work or causes a disruption of any sequence or scheduled work activity of Contractor, Owner, other subcontractors or other parties performing work or activity related to the Project, Subcontractor shall pay Contractor for all costs and damages suffered by Contractor as a result of such delay or disruption including, without limitation, actual or liquidated damages assessed against the Contractor by the Owner. Liquidated damages shall be assessed against the Subcontractor in accordance with the Purchase order, but only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.4.2 The Contractor's Claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

- .1 notice prior to the Contractor's providing services or materials, except in an emergency; and
- .2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

§ 3.5 Contractor's Remedies

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within forty-eight hours after receipt of notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, without prejudice to other remedies the Contractor may have, remedy such default or neglect and withhold, in accordance with Section 11.1.7.2, the reasonable cost thereof from current or future payments due the Subcontractor. If payments due to the Subcontractor are not sufficient to cover such amounts, the Subcontractor shall pay the difference to the Contractor. Contractor's right to perform such Work, as set forth herein, shall not give rise to a duty on the part of the Contractor to exercise such right for the benefit of Subcontractor, its surety (if any) or any other person or entity.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 General

The Subcontractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Subcontractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Subcontractor shall designate in writing a representative who shall have express authority to act on the Subcontractor's behalf with respect to the Project. The term "Subcontractor" means the Subcontractor or the Subcontractor's authorized representative.

§ 4.2 Execution and Progress of the Work

§ 4.2.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.2.2 In executing a Purchase Order for a Project, the Subcontractor shall represent that it has the experience, qualifications, expertise and financial capacity necessary to undertake and properly complete the Work required of it by that Purchase Order and this Agreement, consistent with the level of workmanship and quality standards applicable to the Project. The Subcontractor also represents that in providing its Work pursuant to this Agreement and Purchase Orders hereafter executed, it shall proceed to the best of its ability. The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in, or interference with the Work of the Contractor, other subcontractors, the Owner, or Separate Contractors. The Subcontractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Subcontractor's Work. The Subcontractor shall be responsible to the Contractor for the acts and/or omissions of its employees, Sub-subcontractors, material suppliers and all other persons or entities with whom the Subcontractor has contracted with respect to the Project. Subcontractor shall maintain adequate experienced and cooperative supervisory personnel acceptable to Contractor at the site at all times it is performing Work. The Subcontractor shall designate for each Project a representative who is authorized to speak on behalf of and to bind the Subcontractor with respect to all decisions relating to that Project. The Subcontractors shall not utilize on the Project workers, materials, machinery or equipment which may lead to strikes, work stoppages or other interruptions of or interferences with work relating to the Project. Subcontractor agrees that it and its employees, agents, Sub-subcontractors and suppliers shall confer, cooperate and work in harmony with the Contractor, Owner, other subcontractors and suppliers in order to promote and achieve the timely and orderly completion of the Project.

§ 4.2.3 Submittals

§ 4.2.3.1 The Subcontractor shall submit Shop Drawings, Product Data, Samples, and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors. Approval thereof by Contractor and/or Architect shall not relieve Subcontractor of its obligation to perform its Work in strict accord with the Subcontract Documents, nor of its responsibility for the proper matching and fitting of its Work with contiguous work. Subcontractor shall not

perform any Work for which submittals are required under the Subcontract Documents, until such submittals have been prepared, submitted and approved per the applicable procedures for that Project.

§ 4.2.3.2 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Subcontractor represents to the Contractor that the Subcontractor has (1) reviewed and approved 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 Subcontract Documents.

§ 4.2.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.2.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Subcontract Documents. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.2.6 The Subcontractor shall pay for all materials, equipment, and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements. In the event that Subcontractor, or any of its Sub-subcontractors, material suppliers or other entities for whom the Subcontractor is responsible, assert a mechanics lien, personal liability notice or other payment claim against the Owner and/or the Project, the Subcontractor shall promptly resolve such lien or claim, including if necessary bonding such lien off the Project in accordance with applicable law, and shall defend, indemnify and hold harmless the Contractor, Owner and the Project from all loss, damage and costs, including reasonable attorneys' fees, incurred in connection with such lien or claim. However, Subcontractor's responsibility to promptly resolve and/or remove such lien or claim as set forth above, shall not exist to the extent that the mechanics lien, personal liability notice or other payment claim arises as a result of the Owner's failure to timely make payments to the Contractor under the Prime Contract or to the Contractor's failure to timely make payment to the Subcontractor out of payments which Contractor has actually received from the Owner.

§ 4.2.7 The Subcontractor shall take necessary precautions to properly protect the work of the Contractor, Separate Contractors, and other subcontractors from damage caused by operations under this Subcontract.

§ 4.2.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and Separate Contractors whose work might affect the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or Separate Contractors. Subcontractor shall coordinate and schedule its Work to ensure it is accomplished as an integrated whole with the work of the Contractor and all other subcontractors and contractors performing work on the Project. Any labor, materials, equipment, machinery or services necessary to accomplish such integration shall be undertaken by Subcontractor as part of its Work and at no additional cost to the Contractor.

§ 4.2.9 Time is of the essence and there shall be no deviation from a schedule once approved by the Contractor. Should a delay to or deviation from the approved schedule be caused by the Subcontractor, or anyone for whom the Subcontractor is responsible, the Subcontractor shall proceed as necessary, including working overtime, shift work and adding manpower, in order to recapture such delay and to again conform its Work to the approved schedule, with any increased costs to be borne by the Subcontractor and without claim against the Contractor, the Owner or the Project.

§ 4.3 Permits, Fees, Notices, and Compliance with Laws

§ 4.3.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.3.2 The Subcontractor shall comply with Federal, state, and local tax laws; social security acts; unemployment compensation acts; and workers' compensation acts, insofar as applicable to the performance of this Subcontract.

§ 4.3.3 The Subcontractor shall indemnify, defend and hold harmless the Contractor, Owner and Project from all claims, damages, costs and expenses, including reasonable attorneys' fees, arising from or relating to the Subcontractor's failure to obtain any required permits, licenses or inspections or Subcontractor's failure to adhere to all laws, acts, ordinances, rules, regulations and orders of public authority applicable to its Work on the Project.

§ 4.4 Safety Precautions and Procedures

§ 4.4.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract. The Subcontractor shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, for the safety of persons and property, in accordance with the requirements of the Prime Contract. The Subcontractor shall notify the Contractor within three days of an injury to an employee or agent of the Subcontractor which occurred at the site. The Subcontractor shall at all times remain the controlling employer responsible for the safety programs and procedures applicable to its Work and the activities of others' work in areas controlled by the Subcontractor. Subcontractor expressly agrees that it shall be solely responsible for supervising its employees, that it shall comply with rules, regulations, orders, standards and interpretations promulgated pursuant to the Occupational Safety and Health Act ("OSHA") and OSHA Act of State of Indiana ("IOSHA"), including but not limited to training, provision of personal protective equipment, adherence to all appropriate lock out / tag out procedures and providing all notices, materials safety data sheets, labels, etc. required by the right to know standard. Hard hats and safety glasses will be mandatory while working on the Project in areas deemed as Hard Hat / Safety Glass areas. Subcontractor expressly agrees that should the Contractor or Owner be fined under OSHA, IOSHA or other applicable safety laws due to the acts or omissions of the Subcontractor or its employers, Sub-subcontractor or suppliers, the Subcontractor shall pay or reimburse the Contractor and Owner, in full, for such fines and shall hold harmless and indemnify Contractor and Owner from all other claims, damages and costs relating thereto, including reasonable attorneys' fees.

Subcontractor's employees will receive one warning for corrective action as it pertains to safety violations. Subcontractor's employee will be removed from the Project if safety violations continue after initial notification. Request for project schedule extension or additional compensation will not be approved for delays caused by Subcontractor's non-compliance with safety regulations. In the event the Subcontractor continually fails to meet safety regulations, the Purchase Order will be terminated upon written 3 day notice by the Contractor. All remedies available will be utilized to protect Contractor from additional cost or liabilities incurred by Subcontractor's non-compliance of safety regulations.

§ 4.4.2 If hazardous materials or substances are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors, or anyone directly or indirectly employed by them, and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the Subcontractor shall, prior to delivery to the Project site or exposure of the Contractor, other subcontractors, and other employers on the site to such material or substance, give notice of the chemical composition thereof to the Contractor, other subcontractors and other parties performing work on the site, in sufficient detail and time to permit compliance with the laws by the Contractor, other subcontractors, and other employers on the site.

§ 4.4.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay, and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.4.4 The Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.4.3 and

has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. The indemnity to be provided by the Contractor to the Subcontractor under this provision shall extend to, but not exceed, the indemnity to which the Contractor is entitled to receive from the Owner under the Prime Contract with respect to hazardous materials.

§ 4.4.5 The Subcontractor shall reimburse the Contractor for the cost and expense the Contractor incurs (1) for remediation of a hazardous material or substance brought to the site and negligently handled by the Subcontractor or (2) where the Subcontractor fails to perform its obligations under Section 4.4.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.5 Cleaning Up

§ 4.5.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors. Subcontractor is responsible for Daily Cleaning of his area and debris caused by his employees and Work activities. Should Subcontractor fail to clean his area and remove debris from the building to the dumpster, the Contractor, after giving notice to the Subcontractor, will have area cleaned and will back charge Subcontractor for the cleaning at a rate of either \$25.00 per man hour (Normal Hour Rate) or \$40.00 per man hour (Overtime Rate) as applicable. Any additional costs that are incurred by the Contractor as a result of Subcontractor failing to perform daily cleaning will be charged at a rate of 120% of the actual cost incurred by Contractor.

§ 4.5.2 As provided under Sections 3.4.2 and 4.5.1, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

§ 4.6 Warranty

§ 4.6.1 The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall provide satisfactory evidence as to the kind and quality of materials and equipment furnished or to be furnished.

§ 4.6.2 All material, equipment, or other special warranties required by the Subcontract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with the Subcontract Documents.

§ 4.7 Indemnification

§ 4.7.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), that is caused in whole or in part by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. The Subcontractor shall not, however, be obligated to provide indemnification for claims, damages, losses or expenses arising from the sole negligence or willful misconduct of the Owner, Contractor, Architect, Consultants and Agents and employees of any of them. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.7.

§ 4.7.2 In claims against any person or entity indemnified under this Section 4.7 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 4.7.1 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.

§ 4.8 Remedies for Nonpayment

If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate Modification, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay, and remobilization. Subcontractor will be paid within (7) seven days of Contractor's receipt from the Owner of payment applicable to Subcontractor's Work. Subcontractor expressly acknowledges and agrees that all payments to be made under this Subcontract are contingent upon the Contractor receiving payment for the Subcontractor's Work from the Owner. Subcontractor agrees to assume the risk that it will not be paid by the Contractor for its Work, in the event that the Contractor is not paid by the Owner for such Work, and Subcontractor acknowledges that payment by the Owner to the Contractor shall be a condition precedent to any payment obligation of the Contractor to the Subcontractor.

§ 4.9 Professional Services Provided by Subcontractor

§ 4.9.1 The Subcontractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Subcontract Documents or unless 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. The Subcontractor shall not be required to provide professional services in violation of applicable law.

§ 4.9.2 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Subcontractor by the Subcontract Documents, Subcontractor agrees to provide, consistent with the performance and design criteria set forth in the Subcontract Documents, the design, engineering and other professional services as necessary and appropriate for its scope of the Work ("Subcontractor's Design"). The Subcontractor's Design shall be performed and/or appropriately supervised by design professionals duly licensed in the State where the Project is located, whose signature and seal shall appear on drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by such professionals.

§ 4.9.3 The Subcontractor's Design shall be consistent with the standard of care exercised by qualified design professionals practicing in the same design disciplines as the Subcontractor and having experience on projects of similar scope, size and nature in the same general locale as the current Project ("Standard of Care"). The Subcontractor's Design shall also comply with and conform to all laws, statutes, rules, regulations, codes and other governmental/regulatory orders applicable to the Subcontractor's scope of Work on the Project ("Regulatory Requirements"). To the extent the Owner or another third-party asserts any claim, action, cause of action or other damage arising out of or related to a breach of the Standard of Care or Regulatory Requirements applicable to the Subcontractor's scope of Work, Subcontractor shall indemnify, defend and hold the Contractor harmless from all such claims, actions, causes of action and/or other damages (including reasonable attorneys' fees).

§ 4.9.4 Subcontractor shall be responsible only for the Subcontractor's Design applicable to its scope of the Work. Subcontractor assumes no responsibility for design services provided by the Owner's Architect/Engineer, by other design/build subcontractors or by other design consultants not under the Subcontractor's employ. Subcontractor shall, however, confer and cooperate with the other design professionals involved with the Project, as necessary to coordinate, schedule and interface the Subcontractor's Design with the design services being provided by others.

§ 4.9.5 If professional design services or certifications by a design professional are required because of means, methods, techniques, sequences, or procedures required to complete the Work under the Subcontract Documents, Subcontractor shall provide the design, engineering and other professional services as necessary and appropriate in accordance with the Standard of Care and in compliance with Regulatory Requirements.

ARTICLE 5 CHANGES IN THE WORK

§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of a Modification to the Prime Contract issued subsequent to the execution of this Agreement, the Contractor shall promptly notify the Subcontractor of such Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions, or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, with the Subcontract Sum and the Subcontract Time adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a Claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents. No alterations, increases or decreases shall be made in the Work as shown or described in the Subcontract Documents, except as specifically authorized and directed by a written order signed by a duly authorized representative of the Contractor. Subcontractor shall have no claim for additional, extra or changed Work, unless such Work is undertaken pursuant to a written order signed by the Contractor. Any additional, extra or changed Work performed without such written order will be at Subcontractor's sole risk and expense.

§ 5.3 The Subcontractor shall make all Claims promptly to the Contractor for additional cost, extensions of time and damages for delays, or other causes in accordance with the Subcontract Documents, and no later than ten (10) days following the occurrence giving rise to the claim. Notwithstanding the ten (10) day time period for submittal of claims set forth in the preceding sentence, any Claim which will affect or become part of a Claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time and in such a manner as to permit the Contractor to satisfy the requirements of the Prime Contract. Such Claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's Claim must be made. Failure of the Subcontractor to make such a timely Claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound. In the event Subcontractor's performance of the Work is delayed, suspended, hindered or disputed for any period of time by the individual or cumulative acts or omissions of or interferences by Owner, Contractor, Architect, other subcontractors or other third parties, or due to fire or other casualty, or on account of riots or of strikes, or the action of workmen or others, or on account of unusually adverse weather conditions that could not have been reasonably anticipated, or on account of any acts or God or any other cause whether or not within the Owner's or Contractor's control, the Subcontractor may request an extension of time for performance of its Work; provided that the extension of time granted to the Subcontractor shall not under any circumstances exceed the extension of time granted by Owner to Contractor therefor. Unless the Contractor receives additional compensation from the Owner for such delay, the time extension to be granted shall be the Subcontractor's sole and exclusive remedy and, accordingly, Subcontractor shall assume the monetary risk which may be occasioned by such delay and shall not be entitled to claim or recover any increase in the Subcontract Amount or damages or additional compensation of any type whatsoever, as a consequence of any such delays, suspensions, hindrances or disturbances, whether or not contemplated by the parties and regardless of the severity or duration thereof. To the extent the Contractor does receive additional compensation from the Owner as a result of a delay, the Subcontract shall be entitled to receive its proportionate share of such compensation, considering the impact and consequences of such delay on all affected parties, including but not limited to the Contractor, Subcontractor and other subcontractors.

ARTICLE 6 CLAIMS AND DISPUTES

(Paragraph Deleted)

In order that all parties and all issues that are involved with or related to a dispute can be joined, heard and decided in a consolidated proceeding at which complete and final relief can be granted, the Contractor and Subcontractor hereby agree that the forum and procedure for resolving disputes (i.e. mediation, arbitration, litigation, etc.) as designated in or applicable to the Prime Contract as between the Owner and Contractor, is hereby adopted and incorporated by reference into this Subcontract. Notwithstanding the above, the Contractor and Subcontractor may agree to submit a dispute between them to mediation and/or arbitration as set forth in paragraphs 6.1 and 6.2 below, if at the time such dispute arises both parties specifically agree, in writing, that: (i) the dispute does not and will not involve the Owner and, therefore, there is no need to adhere to the dispute resolution procedures of the Prime

Contract in order to promote consolidation; and (ii) it is in their respective best interests to utilize mediation and/or arbitration as the means to resolve such dispute.

§ 6.1 Mediation

§ 6.1.1 To the extent the parties have agreed to submit a dispute to mediation, they shall proceed in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 6.1.1, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.2 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 6.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

If the Contractor and Subcontractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

§ 6.3 Arbitration

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. The arbitration should be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 6.3.3 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 6.3.4 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The prevailing party in an arbitration shall be entitled to recover its costs and expenses incurred with respect to the arbitration, including reasonable attorneys' fees, expert fees, filing fees and other cost of

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the arbitration, in such amount as awarded by the arbitrator(s) which decided the underlying claim, dispute or other matter in controversy. The arbitrator(s) shall award such expenses, attorneys' fees and other costs of the arbitration as they deem reasonable and appropriate after the arbitrator(s) have issued their award on the underlying claim, dispute or other matter in question. In the subsequent consideration of costs, expenses and fees, the arbitrator(s) may consider the claims, demands and defenses as asserted by the parties during the initial hearing on the underlying claim, as compared to the ultimate award, to determine who is the prevailing party and/or the reasonable amount of the costs, expenses and fees to be awarded, if any.

§ 6.3.5 Consolidation or Joinder

§ 6.3.5.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 6.3.5.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim, dispute, or other matter in question not described in the written consent.

§ 6.3.5.3 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

(Paragraphs Deleted)

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 Termination by the Subcontractor

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. **§ 7.2 Termination by the Contractor**

§ 7.2.1 Termination for Cause

If the Subcontractor (i) refuses or neglects to supply adequate and competent supervision or a sufficiency of properly skilled workmen or of materials of the proper quality and quantity, (ii) fails to prosecute the Work with promptness and diligence, (iii) fails in the performance of any agreement or obligation on its part as contained in the Subcontract Documents, (iv) delays the work of the

(Paragraphs Deleted)

Contractor, other subcontractors or other parties, or (v) persistently or repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within seventy-two hours after receipt of notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, by notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract, take possession of Subcontractor's materials, equipment, tools and appliances applicable to the Project and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed the unpaid balance of the Subcontract Sum, the Subcontractor shall pay the difference to the Contractor.

§ 7.2.2 Termination for Convenience

§ 7.2.2.1 If the Owner terminates the Prime Contract for the Owner's convenience, or if the Contractor terminates the Subcontractor for the Contractor's convenience, the Contractor shall promptly deliver notice to the Subcontractor.

§ 7.2.2.2 In case of such termination for the Owner's or Contractor's convenience, the Subcontractor shall be entitled to receive payment for Work properly executed, costs incurred by reason of the termination, but shall not be entitled to any overhead or profit on the Work not performed.

§ 7.2.2.3 Upon receipt of notice of termination, the Subcontractor shall

- .1 cease operations as directed by the Contractor in the notice;
- .2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.3 Suspension by the Contractor for Convenience

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay, or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

§ 7.3.2 The Subcontract Time and Subcontract Sum shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 7.3.1. Adjustment of the Subcontract Sum shall include profit on the increased cost of performance caused by suspension, delay, or interruption. 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 Subcontract.

§ 7.4 Assignment of the Subcontract

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201-2017 provided the Owner accepts the assignment by notifying the Contractor and Subcontractor.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others.

(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications, and accepted alternates.)

Subcontractors' Work for each individual Project shall be described in the Purchase Order as executed by Contractor and Subcontractor for that Project.

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 The date of commencement of the Subcontractor's Work, shall
be the date of the

Purchase Order executed for that Project, unless in that Purchase Order a different date is stated or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.

(Paragraph Deleted)

(Check one of the following boxes.)

(Paragraph Deleted)

§ 9.2 Subcontract Time

§ 9.2.1 The Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontract Time shall be measured from the date of commencement of the Subcontractor's Work.

§ 9.2.2 Subject to adjustments of the Subcontract Time as provided in the Subcontract Documents,

(Paragraph Deleted)

the date

by which substantial completion shall
be obtained for the Subcontractor's Work and/or for the
(Table Deleted)

Project shall be established in each Purchase Order.

§ 9.3 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.4 No extension of time will be valid without the Contractor's written consent after a Claim is made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 With respect to each Project for which a Purchase Order is issued and signed, the Contractor shall pay the Subcontractor the Subcontract Sum in current funds for the Subcontractor's performance of the Subcontract the Subcontract Sum as set forth in that Purchase Order, subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 Alternates

§ 10.2.1 Alternates, if any, included in the Subcontract

(Table Deleted)

Sum will be listed on or attached to
the Purchase Order for that Project.
(Table Deleted)

§ 10.3 Unit prices applicable to a Project, if
any will be listed on or attached to the Purchase Order for that Project.

(Table Deleted)

§ 10.4 Allowances applicable to a Project, if any, will be established in the Purchase Order for that Project.
(Identify allowance and state exclusions, if any, from the allowance price.)

Item

Price

ARTICLE 11 PAYMENTS

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Contractor by the Subcontractor, corresponding to Applications for Payment submitted by the Contractor to the Architect, and Certificates for Payment issued by the

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Architect, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the part of the Contractor or Subcontractor for breach of trust, or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision.

§ 11.1.2 The period covered by each Application for Payment shall be set forth in the Purchase Order for that Project.

Each application for payment shall be made on AIA G702 and G703 forms, or on a form approved by the Contractor which contains substantially similar information and certifications by the Subcontractor. Each application for payment shall include a conditional lien waiver signed by the Subcontractor corresponding to the current application, unconditional lien waivers from Sub-subcontractors, material suppliers or other entities for whom the Subcontractor is responsible, confirming their receipt of payment for Work, materials, equipment or labor covered by the prior application and as paid by the Contractor and such additional supporting documentation as requested by the Contractor, Architect, Owner or Owner's lender.

§ 11.1.3 Provided an Application for Payment is timely received by the Contractor consistent with the application date set forth in the Purchase Order for that Project, the Contractor shall include the Subcontractor's Work covered by that application in the next Application for Payment which the Contractor is entitled to submit to the Architect. The Contractor shall pay the Subcontractor each progress payment no later than seven days after the Contractor receives payment from the Owner.

§ 11.1.4 If the Subcontractor's Application for Payment is received by the Contractor after the application date fixed in the Purchase Order for that Project, the Subcontractor's Work covered by it shall be included by the Contractor in the next Application for Payment submitted to the Architect.

§ 11.1.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent Application for Payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require, and unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's Applications for Payment. Applications for payment that do not include required information can be denied until proper pay request information is resubmitted. All payment requests must be signed, notarized and in original form.

§ 11.1.6 Applications for Payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the Application for Payment.

§ 11.1.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Subcontract Sum properly allocable to completed Work;
- .2 That portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing; and
- .3 The amount, if any, for changes in the Work that are not in dispute and have been properly authorized by the Contractor, to the same extent provided in the Prime Contract, pending a final determination by the Contractor of the cost of changes in the Subcontractor's Work, even though the Subcontract Sum has not yet been adjusted.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of previous payments made by the Contractor;
- .2 The amount, if any, for Work that remains uncorrected and for which the Contractor has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017 for a cause that is the fault of the Subcontractor;
- .3 For Work performed or defects discovered since the last payment application, any amount for which the Contractor may withhold payment in whole or in part, as provided in Article 9 of AIA Document A201-2017, for a cause that is the fault of the Subcontractor;
- .4 Amounts sufficient to protect Contractor from Claims or liens filed by parties for whom the Subcontractor is responsible;
- .5 Amounts sufficient to protect Contractor from Subcontractor's failure or neglect to timely make payments due to its Sub-subcontractors, material suppliers or other entities for whom the Subcontractor is responsible;
- .6 Amounts sufficient to protect Contractor from the Subcontractor not being able to complete its Work for unpaid balance of the Subcontract Sum;
- .7 Amounts sufficient to protect Contractor from any other breach of this Agreement or any Purchase Order; and
- .8 Retainage withheld pursuant to Section 11.1.8 of this Agreement.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to substantial completion of the Subcontractor's Work, the Contractor may withhold amounts as retainage from the payment otherwise due in accordance with the Purchase Order and/or to the extent Owner may withhold retainage from Contractor under the Prime Contract.

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

(Paragraphs Deleted)

§ 11.1.9 Upon the partial or entire disapproval by the Contractor of the Subcontractor's Application for Payment, the Contractor shall provide notice to the Subcontractor. If the Subcontractor disputes the Contractor's decision regarding a Subcontractor's Application for Payment in whole or in part, the Subcontractor may submit a Claim in accordance with Article 6. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.1.10 Provided the Contractor has fulfilled its payment obligations under the Subcontract Documents, the Subcontractor shall defend and indemnify the Contractor and Owner from all loss, liability, damage, or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any of the Subcontractor's subcontractors, suppliers, or vendors of any tier. Upon receipt of notice of such lien claim or other claim for payment, the Contractor shall notify the Subcontractor. If approved by the applicable court, when required, the Subcontractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 11.2 Substantial Completion

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt Application for Payment for such Work. Within 30 days following issuance by the Architect of the Certificate for Payment covering such substantially completed Work and upon receipt of payment from the Owner for such Work, the Contractor shall make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the

Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

§ 11.3 Final Payment

§ 11.3.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a Certificate for Payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. Final payment of the unpaid balance of the Subcontract Amount shall not become due until: (i) Subcontractor has delivered to the Contractor all operation and maintenance manuals, "as-built" drawings, guarantees and warranties applicable to the Work performed and materials and equipment supplied by the Subcontractor; (ii) Subcontractor has completed all start-up, testing and balancing of systems that are included as part of its Work and has delivered to the Contractor the tests and reports confirming that this been performed; and (iii) Subcontractor has fulfilled all other requirements which are prescribed by the Subcontract Documents.

§ 11.3.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. The Subcontractor's final application for payment shall be accompanied by: (a) Subcontractor's conditional final lien waivers; (b) unconditional final lien waivers from all Sub-subcontractors and material suppliers who Subcontractor has already fully paid for their portion of the Work relating to the Project; (c) conditional final lien waivers from all Sub-subcontractors and material suppliers who Subcontractor has not yet fully paid, but will be paid out of the final payment; and (d) if requested by the Contractor, AIA Form G706 (Affidavit of Payment of Debts) and/or G706A (Affidavit of Release of Liens). The Subcontractor also agrees, if requested by the Contractor, that portions of the final payment owed to Sub-subcontractors or materials suppliers may be distributed by joint checks or the Subcontractor shall provide other assurance, in a form satisfactory to Contractor, that upon release of final payment all Sub-subcontractors and material suppliers of the Subcontractor will be promptly and fully paid. Upon final payment by the Contractor, Subcontractor shall obtain and deliver to the Contractor unconditional final
(Paragraph Deleted)

lien waivers from the remaining Sub-subcontractors and material suppliers as those funds are promptly disbursed.

In the event a mechanics lien is thereafter filed or other payment claim is thereafter asserted by a Sub-subcontractor, material supplier or other entity for whom the Subcontractor is responsible, the Subcontractor shall defend, indemnify and hold harmless the Contractor, Owner and Project from all claims, costs and expenses, including responsible attorneys' fees, incurred as result of such lien being filed or claims asserted and shall promptly resolve, obtain the release of or bond the mechanics lien or other claim off the Project in accordance with applicable law.

(Paragraph Deleted)

ARTICLE 12 INSURANCE AND BONDS

§ 12.1 Subcontractor's Required Insurance Coverage

§ 12.1.1 The Subcontractor shall purchase and maintain insurance of the coverage and limits of liability as specified in the Purchase Order for the Project or as set forth below, whichever are greater:

Workers Compensation

- Statutory limits for workers compensation
- Employers liability limits of \$2,000,000.00 bodily injury by accident each accident, \$ _____ bodily injury by disease policy limits, and \$ _____ bodily injury by disease each employee.

General Liability

- General Aggregate \$ 1,000,000.00
- Products/Completed Operations Aggregate \$ _____
- Personal Injury and Advertising Injury \$ _____

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- Each Occurrence Limit \$ _____
- Property Damage Legal Liability \$ _____
- Medical Payments, any one person \$ _____

Coverage provided by this Policy or Policies shall include: Contractual Coverage for liability assumed by Subcontractor in this Agreement and Broad Form Property Damage.

Automobile

- Coverage for owned, non-owned and hired vehicles with minimum liability limits of \$ _____ per accident on account of bodily injury to or death and for all damages arising out of any injury to or destruction of property, whether real, personal or mixed; and, at least, statutory limits for uninsured and underinsured coverage.

Umbrella/Excess

- Umbrella policy written in excess of the primary general liability, employer's liability and automobile coverage, with a general aggregate limit of \$ _____ and a limit for each occurrence of \$ _____.

Professional Liability

(Table Deleted)

- If Subcontractor is performing any design services under a Purchase Order, professional liability insurance coverage with minimum limits of \$ _____ per claim and \$ _____ in the aggregate. The deductible or self-insured retention on such policy shall not exceed \$ _____. If written on a "claims made" basis, such coverage shall be continued for a minimum period of two (2) years following Substantial Completion of the Project.

§ 12.1.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 12.1.3

Certificates of Insurance. The Subcontractor shall provide certificates of insurance acceptable to the Contractor evidencing compliance with the requirements in this Article 12 at the following times: (1) prior to commencement of the Subcontractor's Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Contractor's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the time required in this Article 12. The certificates shall show the Contractor and the Owner as additional insureds on the Subcontractor's Commercial General Liability and any excess or umbrella liability policy. The Subcontractor shall furnish the Contractor complete and certified copies of all policies required by this Agreement if so requested by the Contractor.

§ 12.1.5 Deductibles and Self-Insured Retentions. The Subcontractor shall disclose to the Contractor any deductible or self-insured retentions applicable to any insurance required to be provided by the Subcontractor.

§ 12.1.6 Additional Insured Obligations. The Subcontractor shall cause its commercial general liability coverage to include: (1) the Contractor, the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor and Owner as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions for which loss occurs during the Subcontractor's completed operations. The additional insured coverage shall be primary and non-contributory to any of the Contractor's and Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent

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commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ 12.1.7 Notice of Cancellation or Change in Coverage. Within three (3) business days of the date the Subcontractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Subcontract Documents, the Subcontractor shall provide notice to the Contractor of such impending or actual cancellation or expiration. Upon receipt of notice from the Subcontractor, the Contractor shall, unless the lapse in coverage arises from an act or omission of the Contractor, have the right to suspend the Work in accordance with this Agreement until the lapse in coverage has been cured by the procurement of replacement coverage by the Subcontractor. The furnishing of notice by the Subcontractor shall not relieve the Subcontractor of any contractual obligation to provide any required coverage.

§ 12.2 Subcontractor's Required Performance Bond and Payment Bond

To the

(Paragraph Deleted)

(Table Deleted)

(Paragraph Deleted)

extent bonds are required for a particular Project, it will be

(Paragraph Deleted)

so specified in the Purchase Order for the Project.

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12.3 Property Insurance

§ 12.3.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project, to the extent copies of the policies are available to the Contractor. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

§ 12.3.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work if required by the Contractor in writing, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 12.3.3 Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the Application for Payment process.

§ 12.4 Waivers of Subrogation

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work or to property at or adjacent to the Project site, except such rights as they may have to proceeds of such insurance held by the Owner. The Subcontractor shall require similar written waivers in favor of the individuals and entities enumerated herein from the Subcontractor's Sub-subcontractors, agents, and employees. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 12.4 shall not prohibit this waiver of subrogation, which shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 13 TEMPORARY FACILITIES, SERVICES, EQUIPMENT AND WORKING CONDITIONS

§ 13.1 The Contractor shall furnish and make the Contractor's temporary facilities and services available to the Subcontractor at no cost, except as noted below:

Dumpsters for trash, rubbish and debris removal to the extent that they are not to be included in Subcontractor's proposal attached to the Purchase Order for the Project in question. Temporary toilet facilities, telephone/fax (non-long distance) as per Owner's agreement and where possible, electric usage and water unless specifically determined that Subcontractor will provide temporary utility service to complete his scope or work.

§ 13.2 The Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

§ 13.3 Specific working conditions as noted below:

(Insert any specific arrangements or requirements concerning working conditions and labor matters applicable to the Subcontractor's Work.)

See Purchase Order for specific job requirements applicable to each Project.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

§ 14.2 The Contractor's representative is identified in the Purchase Order for a particular Project:
(Name, address, email address and other information)

§ 14.3 The Subcontractor's representative is identified in the Purchase Order for a particular Project:
(Name, address, email address and other information)

§ 14.4 Notice

§ 14.4.1 Except as otherwise provided in Section 14.4.2, where the Subcontract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic notice is set forth in Section 14.4.3.

§ 14.4.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 14.4.3 Notice in electronic format, pursuant to Section 14.4.1, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth in the Purchase Order for a particular Project:

(If other than in accordance with AIA Document E203™–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Neither the Contractor's nor the Subcontractor's representative shall be changed without ten days' prior notice to the other party.

§ 14.6 The invalidity of any provision of the Subcontract Documents shall not invalidate the Subcontract or its remaining provisions. If it is determined that any provision of the Subcontract 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, the Subcontract shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Subcontract.

§ 14.7 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 14.7.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 15 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 15.1 This Agreement is comprised of the following documents:

- .1 AIA Document A401™–2017, Standard Form Agreement Between Contractor and Subcontractor and the Purchase Order executed by Contractor and Subcontractor for each particular Project including all Exhibits thereto;
- .2 Prime Contract between the Owner and Contractor, including all documents and exhibits enumerated in the Prime Contract. Subcontractor can review the Prime Contract upon notice to Contractor;
- .3 Modifications to the Prime Contract, if any, issued subsequent to the execution of the Prime Contract but prior to the execution of the Purchase Order for that Project and as listed in that Purchase Order.
- .4 Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement.)
- .5 Other
documents if any, forming part of the Subcontract Documents as set forth in the applicable Purchase Order:

ARTICLE 16 MISCELLANEOUS PROVISIONS

§ 16.1 In the event that Subcontractor has performed any Work prior to the date a Purchase Order is signed for that Project, pursuant to authorizations to proceed, letters of intent or otherwise, the terms of this Agreement and the Purchase Order, once signed, shall govern such prior Work, to the same extent as though such Work was performed after the date the Purchase Order was executed. All payments made to Subcontractor for Work performed pursuant

to an authorization to proceed, letter of intent or otherwise, shall be applied against the Subcontract Amount once the Purchase Order for that Project is signed.

§ 16.2 During performance of its Work the Subcontractor shall promptly and properly repair, replace or otherwise correct, at its own expense, any of its Work that is rejected by the Contractor, Architect or Owner or which is known, observed or discovered to be defective or fails to conform to the requirements of the Subcontract Documents. Furthermore, if within one year after completion and acceptance of the Project, or such longer period as established by extended warranties or as otherwise specified in the Subcontract Documents, the Subcontractor's Work or any portion thereof is found to be not in accordance with the requirements of the Subcontract Documents, Subcontractor shall, at its own cost, promptly correct it after receipt of written notice from the Contractor to do so.

The Subcontractor's responsibility to correct such Work within one year of completion of the Project, or as otherwise provided by the Subcontract Documents, shall not be affected, diminished or restricted by limitations, restrictions, conditions or the inability or refusal of a Sub-subcontractor, manufacturer or supplier to correct or warrant such Work or by the expiration of any Uniform Commercial Code statutes of limitations. If Subcontractor fails to correct the defective or non-confirming Work within a reasonable time after receipt of notice from Contractor, the Contractor may correct it and change the costs thereof to the Subcontractor. Nothing contained herein shall be construed to establish a period of limitation with respect to obligations of Subcontractor under this Subcontract. This paragraph 16.2 relates only to the specific obligation of Subcontractor to correct the Work and has no relationship to the time within which the obligation to comply with the Subcontract Documents, including without limitation the warranty obligation set forth in paragraph 4.6, may be enforced, nor to the time within which proceedings may be commenced to establish Subcontractor's obligations, other than the correction of the Work, nor to the time within which defects or deficiencies in the Work must first be discovered or experienced.

§ 16.3 Subcontractor shall keep at the Project site an up-to-date copy of the Subcontract Documents, in good order and marked currently to record all changes made during construction. At completion of the Work, Subcontractor shall deliver to the Contractor "as-built" drawings reflecting the final completion of the Work and all changes made during construction of the Work.

This Agreement entered into as of the day and year first written above.

CONTRACTOR(Signature)

(Printed name and title)

SUBCONTRACTOR(Signature)

(Printed name and title)