



VETERANS CONSTRUCTION ENTERPRISES, LLC
STANDARD TERMS AND CONDITIONS
SUBCONTRACT MASTER AGREEMENT

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1. DEFINITIONS.

- 1.1 "VCE" or "Contractor" means Veterans Construction Enterprises, LLC.
- 1.2 "Agreement" means the Subcontract Master Agreement, Project Master Agreement, any and all exhibits thereto, and any DOAs issued pursuant thereto.
- 1.3 "Delivery Order Agreement" or "DOA" means the written document agreed to by Contractor and Subcontractor which identifies and defines the specific work or services to be provided by Subcontractor, the price for same, and other terms and conditions applicable to same.
- 1.4 "Subcontractor" means the entity identified in the Subcontract Master Agreement to provide work or services, including all of Subcontractor's successors or assigns.
- 1.5 "Owner" means the party with whom Contractor has a contract.
- 1.6 "Contract Documents" means the documents enumerated in the Contract between the Owner and Contractor and consist of the Contract between Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Contract, and Modifications or Change Orders issued after execution of the Contract.
- 1.7 "Work" means the construction and services required by a DOA and described in the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Subcontractor or its subcontractors or suppliers to fulfill the Subcontractor's obligations. The Work may constitute the whole or a part of the Project.
- 1.8 "Project" means the total construction of which the Work performed under the DOA as described in the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.
- 1.9 "Parties" means Contractor and Subcontractor.

2. SUBCONTRACTOR'S WORK.

2.1 Subcontractor's Work.

Subcontractor shall perform all Work and shall furnish all supervision, labor, materials, plant, scaffolding, hoists, tools, equipment, supplies, and all other things necessary for the construction and completion of the Work described in Delivery Order Agreements (hereinafter "DOAs") to be issued by Contractor on an as needed basis at a later date. The Work shall be performed in strict accordance with the Working Conditions enumerated herein, the Subcontract Master Agreement, the Project Master Agreement and to the satisfaction of Contractor and the Owner.

2.2 Subcontractor Pricing.

Subcontractor may be requested to price all or portions of Delivery Orders issued by the Owner to Contractor. Subcontractor agrees to provide a price to Contractor in a timely manner to allow Contractor sufficient time to meet its obligations to the Owner. It is agreed that Contractor may accept or reject any or all proposals provided by Subcontractor and has no obligation to authorize any work under this Subcontract Master Agreement and is not liable for any of the Subcontractor's costs or expenses incurred for estimating, bidding and/or meeting the requirements of this Subcontract Master Agreement, except to the extent included in a DOA signed by Contractor and Subcontractor. Should the Subcontractor's price and schedule be acceptable to Contractor, Contractor will issue Subcontractor a DOA to authorize the Work.



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2.3 Flow Down of Contract Documents.

With respect to work covered by this Subcontract Master Agreement and to the extent any rights, obligations, risks and responsibilities relate in any part or in any way, directly or indirectly, to the Work covered by this Subcontract Master Agreement, Subcontractor shall have all rights against Contractor which Contractor has against Owner under the Contract Documents, and Subcontractor shall assume toward Contractor all obligations, risks and responsibilities which Contractor has assumed towards the Owner in the Contract Documents. Subcontractor shall have the right to enforce its rights and remedies, and to defend against claims against it by the Owner as provided in the Article entitled "Claims and Disputes".

2.4 Relationship of the Parties.

Subcontractor is, and will remain, an independent contractor. Nothing in the Subcontract Master Agreement or any DOA(s) shall be construed to create a partnership, joint venture, or relationship of employer and employee. Subcontractor is solely responsible for the means and methods it uses in performing its Work.

3. PAYMENT.

3.1 Payment.

Contractor shall pay Subcontractor in installments for performance of the Work, subject to additions and deductions as provided in a DOA and the Subcontract Master Agreement, an amount to be established in each DOA.

3.2 Partial Payments and Retainage.

On a DOA basis, partial payments shall be due to Subcontractor in the amount of 90% of the Work in place which has been approved by Contractor and the Owner. If the Contract Documents allow Contractor partial payments for stored materials, partial payments shall also be due to Subcontractor in the amount of 90% of stored materials which have been approved by Contractor and the Owner. For the purpose of determining partial payments, Subcontractor shall submit to Contractor for approval a breakdown of the total price of each DOA showing the amount included therein in each principal category of work within five (5) days of the execution of each individual DOA. In the event Contractor disapproves said breakdown, Contractor shall establish a reasonable breakdown that shall serve as the basis for partial payments.

3.3 Time for Payment.

Partial payments on a DOA basis for satisfactory performance, subject to withholdings or off-sets as provided herein, shall be due within seven (7) days following receipt of payment from the Owner by Contractor. No partial payment made under this Subcontract Master Agreement shall be considered an acceptance of the Work, in whole or in part, and Subcontractor agrees that Contractor's receipt of payment from the Owner is a condition precedent Subcontractor's right to payment from Contractor.

3.4 Payment of Subcontractors and Suppliers.

Subcontractor shall insure that, at all times, all subcontractors, employees, and suppliers are paid all amounts due in connection with the performance of the DOAs issued incidental to this Subcontract Master Agreement. After the first partial payment hereunder, Contractor shall have the right to withhold any subsequent partial payments until Subcontractor submits evidence satisfactory to Contractor that all amounts owed in connection with the performance of one or more DOAs have been paid. Further, Subcontractor agrees that Contractor may pay all persons which have not been paid the monies due to them in connection with DOAs issued incidental to this Subcontract Master Agreement, whether or not a claim has been filed, and Subcontractor shall, to the extent that Contractor has not recovered said amounts pursuant to withholding, pay said amounts to Contractor upon demand. Subcontractor shall also immediately reimburse Contractor for any amounts paid by Contractor as a result of claims asserted against Contractor or Contractor's payment bond by any subcontractor, employee or supplier of Subcontractor, including, without limitation, attorneys' fees, expert witness fees and costs of litigation.

3.5 Title to Work.

All material and work covered by partial payments shall become the property of the Owner. However, this provision shall not relieve Subcontractor from the sole responsibility and liability for all Work for which payments have been made until final acceptance thereof by the Owner.

3.6 Withholdings and Off-Sets.

Contractor may withhold and off-set amounts otherwise due under this Subcontract Master Agreement or any other contractual arrangements between the parties to cover or apply against Contractor's reasonable estimate of any costs or liability Contractor has incurred or may incur for which Subcontractor may be responsible.

3.7 Final Payment.

Final payment for each DOA, subject to withholdings or off-sets permitted hereunder, shall be made after Subcontractor's work has been completed and approved by the Owner, satisfactory proof of payment of all amounts owed by Subcontractor in connection with the Subcontract Master Agreement has been provided and the entire Delivery Order is complete. Receipt of final payment from the Owner shall be a condition precedent to any obligation of Contractor to pay Subcontractor.



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3.8 Partial and Final Releases.

As a condition for each partial payment under each DOA, and as a condition for final payment under each DOA, Subcontractor shall execute a release in a form satisfactory to Contractor, waiving and releasing all claims arising from prior work, including, but not limited to, claims against Contractor's payment bond and mechanic's liens; certifying that Subcontractor has paid all of its bills, taxes or other obligations; and indemnifying and holding Contractor harmless from all of the foregoing. If requested by Contractor, as a further condition for each partial payment and as a condition for final payment, Subcontractor shall furnish Contractor such executed releases from all subcontractors, suppliers, and materialmen of Subcontractor. All requests for payment shall be submitted in a format acceptable to Contractor. Receipt of each partial payment from the Owner shall be a condition precedent to any obligation of Contractor to pay Subcontractor.

3.9 Additional Payment Procedures.

Additional payment procedures and requirements are enumerated in the *Payment Procedures and Requirements* information sheet.

4. SUBCONTRACTOR'S INVESTIGATION AND REPRESENTATIONS.

Subcontractor represents that it is fully licensed and qualified to perform work that may be awarded via DOAs issued incidental to the Subcontract Master Agreement, and acknowledges that prior to the execution of the Subcontract Master Agreement it has (a) by its own independent investigation ascertained (i) the conditions involved in performing the work, and (ii) the obligations of the Subcontract Master Agreement and the Contract Documents; and (b) verified all information furnished by Contractor or others satisfying itself as to the correctness and accuracy of that information. Any failure by Subcontractor to independently investigate and become fully informed will not relieve Subcontractor from its responsibilities hereunder.

5. PERFORMANCE AND PAYMENT BONDS.

Subcontractor may be required to provide performance and payment bonds for any or all DOAs, in a form and from a surety acceptable to Contractor. In such event, Subcontractor shall include the cost of the bonds in the cost of the DOA.

6. SUBCONTRACTOR'S LIABILITY.

6.1 Responsibility.

Subcontractor hereby assumes the entire responsibility and liability for all work, supervision, safety, labor, and materials provided hereunder, whether or not erected in place, and for all plant, scaffolding, hoists, tools, equipment, supplies, and other things provided by Subcontractor until final acceptance of the Work by the Owner. In the event of any loss, damage, or destruction thereof from any cause, Subcontractor shall be liable therefore, and shall repair, rebuild and make good said loss, damage or destruction at Subcontractor's cost.

6.2 Liability.

Subcontractor shall be liable to Contractor for all costs Contractor incurs as a result of Subcontractor's failure to fully perform and complete the Work of the DOAs issued incidental to the Subcontract Master Agreement in strict accordance with each DOA and the Master Agreement. Subcontractor's failure to perform and complete shall include the failure to perform and complete by any of its suppliers and/or subcontractors of any tier. Subcontractor's liability shall include, but not be limited to (1) damages and other delay costs payable by Contractor to the Owner; (2) Contractor's increased costs of performance, such as extended overhead and increased performance costs resulting from Subcontractor-caused delays or improper Subcontractor work; (3) warranty and rework costs; (4) liability to third parties; (5) excess costs; and (6) attorneys' fees and related costs.

6.3 Use of Machinery or Other Items.

In the event that Subcontractor or any of its agents, employees, suppliers, or lower-tier subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, lifts, or similar items belonging to or under the control of Contractor, Subcontractor shall be liable to Contractor for any loss or damage (including personal injury or death) which may arise from such use, and, to the fullest extent permitted by law, shall indemnify and hold harmless Contractor and its agents, servants, employees, and sureties from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or related thereto, except where such loss or damage is due to the sole negligence of Contractor or Contractor employees.

6.4 Cleanup.

Subcontractor shall, at its own expense, keep the premises at all times free from waste materials, packaging and other debris accumulated in connection with the Work by collecting and removing such debris from the job site on a daily basis. Upon the completion of the Work in each area, Subcontractor shall sweep and otherwise make the Work area and its immediate vicinity "broom-clean", remove all of its tools, equipment, scaffolds, temporary structures and surplus materials as directed by Contractor, and at final inspection clean and prepare the Work for acceptance by the Owner.



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6.5 Insurance.

Subcontractor's assumption of liability is independent from, and not limited in any manner by, the Subcontractor's insurance coverage obtained pursuant to the Article entitled "Subcontractors Insurance", or otherwise. All amounts owed by Subcontractor to Contractor as a result of the liability provisions of this Master Agreement shall be paid to Contractor upon demand.

6.6 Contractor Markup.

Subcontractor's liability for Contractor's costs under this Article shall include a 10% markup. This markup is not a penalty, but is established as liquidated damages to compensate Contractor for its administrative costs and/or to allow Contractor a reasonable profit on work which Contractor must perform as a result of Subcontractor's failure to properly perform and complete its Work.

7. INDEMNIFICATION.

IF, AS A RESULT, IN WHOLE OR IN PART, OF THE NEGLIGENCE (OR OTHER ACT FOR WHICH THERE IS LEGAL LIABILITY) OF SUBCONTRACTOR, HIS EMPLOYEES, AGENTS, OR SUBCONTRACTORS OR SUPPLIERS OF ANY TIER, ANY PERSON (INCLUDING EMPLOYEES OF SUBCONTRACTOR) SUFFERS INJURY OR DEATH OR ANY PROPERTY IS DAMAGED, LOST, OR DESTROYED, SUBCONTRACTOR ASSUMES THE LIABILITY THEREFOR AND, TO THE FULLEST EXTENT PERMITTED BY LAW, SHALL INDEMNIFY AND HOLD HARMLESS CONTRACTOR AND ITS AGENTS, SERVANTS, EMPLOYEES, AND SURETIES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ARISING OUT OF OR RELATED THERETO, REGARDLESS, TO THE EXTENT PERMITTED BY LAW, OF WHETHER SUCH INJURY, DEATH, DAMAGE, LOSS OR DESTRUCTION IS CAUSED IN PART BY CONTRACTOR OR ITS AGENTS, SERVANTS OR EMPLOYEES. SUBCONTRACTOR'S OBLIGATIONS UNDER THIS ARTICLE SHALL BE IN ADDITION TO ANY INDEMNITY LIABILITY IMPOSED BY THE CONTRACT DOCUMENTS.

8. SUBCONTRACTOR'S INSURANCE.

8.1 Insurance Required

Prior to commencing work, Subcontractor shall procure and thereafter maintain, at its own expense, until one year elapses from the final completion of the Work, insurance coverage in a form, in amounts, and from insurers acceptable to Contractor. Such insurance shall be in the name of the Subcontractor as listed in these Standard Terms and Conditions and any Delivery Order Agreement issued, and the Subcontractor's name must match the "Named Insured" on the Certificate of Insurance.

8.2 Amounts of Insurance

Unless otherwise specified in the Project Terms and Conditions, a Delivery Order Agreement or other Agreement between Subcontractor and Contractor, the Subcontractor shall maintain minimum insurance coverage as follows:

8.2.1 Commercial General Liability (CGL) Insurance with a per occurrence limit of not less than \$500,000 and a general aggregate limit of not less than \$1,000,000.

- 8.2.1.1 Subcontractor's CGL policy will be endorsed such that the general aggregate limit applies on a per-project basis.
- 8.2.1.2 Subcontractor's CGL policy will be written on an ISO occurrence form CG 00 01 10 01 or substitute form providing equivalent broad form coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
- 8.2.1.3 Contractor, Owner, and all other parties required by Contractor, shall be included as additional insured using ISO additional insured endorsement CG 20 10 11 85 or similar endorsement providing equivalent coverage including completed operations. The insurance provided to the additional insureds shall be as broad as the coverage provided by the named insured Subcontractor. It shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible, maintained by, or available to, the additional insureds.
- 8.2.1.4 Subcontractor's CGL policy shall be endorsed to waive all rights against the Contractor, Owner, their agents, officers, directors, and employees for recovery of damages.
- 8.2.1.5 Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain completed operations coverage for at least 5 years or the applicable statute of repose where the project is located, whichever is longer.
- 8.2.1.6 Attached to each certificate of insurance, Subcontractor shall provide a complete copy of the additional insured endorsement form for their CGL policy for review and approval by Contractor. Blanket additional insured endorsements for all work performed by the named insured Subcontractor are acceptable to Contractor provided they meet the requirements outlined in this section.

8.2.2 Business Automobile Liability Insurance with a combined single limit not less than \$500,000 each accident.

- 8.2.2.1 Automobile liability coverage must include coverage for liability arising out of all owned, leased, hired, and non-owned vehicles.
- 8.2.2.2 Contractor, Owner and all other parties required by Contractor shall be included as additional insured.



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8.2.3 *Workers Compensation Insurance with statutory benefits limits in the jurisdiction where the Work is to be performed.*

- 8.2.3.1 Employers' liability limits of at least \$500,000 bodily injury each accident, \$500,000 bodily injury by disease each employee, and \$500,000 bodily injury by disease policy limit.
- 8.2.3.2 Subcontractor's Workers Compensation policy shall be endorsed to waive all rights against Contractor, Owner, their agents, directors, and employees for recovery of damages.
- 8.2.3.3 Where applicable, U.S. Longshore and Harborworkers Compensation Act coverage shall be included.

8.2.4 *Commercial Umbrella Insurance with limits of at least \$1,000,000 each occurrence and \$1,000,000 general aggregate.*

- 8.2.4.1 Umbrella coverage must follow form over the terms and conditions of the primary general liability, automobile liability, and employers' liability insurance coverages.
- 8.2.4.2 Where the Work involves elevator renovations, replacements, repairs or construction, the Subcontractor shall provide an umbrella policy with limits of at least \$2,000,000 each occurrence and \$2,000,000 general aggregate.

8.3 Certificates of Insurance

Certificates of insurance acceptable to Contractor shall be filed with Contractor prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Article shall contain the following provision: *"Cancellation or any material change in the policies adversely affecting the interest of the Government in such insurance shall not be effective for such period as may be prescribed by the laws of the state in which this contract is to be performed and in no event less than thirty (30) days written notice to Veterans Construction Enterprises, LLC"*

Subcontractor shall submit a Certificate of Insurance naming Contractor, *Veterans Construction Enterprises, LLC*, as the "Certificate Holder" at the address listed in the Project Terms and Conditions. This Certificate shall be submitted with, or within ten (10) of, the Subcontractor's delivery of the executed Project Terms and Conditions and include the additional insured, and other endorsements as applicable, as listed on the Project Terms and Conditions.

8.4 Waivers of Subrogation

Contractor and Subcontractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by a fiduciary. Subcontractor shall require of its subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

8.5 Insurance Requirements for Lower Tier Subcontractors.

Subcontractor shall ensure that its subcontractors at any tier procure and maintain insurance in like form and amounts, including the Additional Insured, primary and non-contributory, and waiver of subrogation requirements, all as set forth in this Article 8. Prior to any of the Subcontractor's subcontractors at any tier entering the project site, the Subcontractor shall provide to the Contractor a Certificate of Insurance from each Subcontractor's subcontractors at any tier. Subcontractor will not be entitled to a change in the contract price or contract time as a result of Contractor preventing the Subcontractor's subcontractor at any tier from entering the project site because of a lack of evidence of suitable insurance coverage.

9. TIME OF PERFORMANCE.

9.1 Schedule

On a DOA basis, Subcontractor will proceed with the work in a prompt and diligent manner, in accordance with Contractor's schedule as reasonably amended from time to time. Time is of the essence under each DOA and under the Subcontract Master Agreement. Should Subcontractor fail to perform and complete the Work specified in a DOA in accordance with Contractor's schedule, and provided the Subcontractor has not previously obtained an extension of time from Contractor, Subcontractor shall be liable to Contractor and shall promptly reimburse Contractor for all costs incurred by Contractor due to the delay, including, without limitation, field and home office overhead expenses. Subcontractor shall also be liable for and shall be charged its share of liquidated damages assessed by the Owner, such share to be determined by Contractor. All such costs and damages shall be deducted from any amounts due to Subcontractor under any or all DOA(s). Should there be insufficient funds due under its DOA(s) to fully compensate Contractor, Subcontractor shall pay Contractor the difference. The provisions for time established in each DOA are stated in terms of calendar days.

9.2 Compensation for Delays

Subcontractor shall be entitled to additional compensation for compliance with schedule amendments only to the extent the Contract Documents entitle Contractor to reimbursement. Receipt of payment from the Owner for delays or schedule amendments shall be a condition precedent to Contractor's obligation to pay Subcontractor for same.



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9.3 Submittal of Schedule

If requested by Contractor, Subcontractor shall submit a detailed schedule for performance of each individual DOA, in a form acceptable to Contractor, which shall comply with all scheduling requirements of the Contract Documents. Contractor may, in its sole discretion, direct Subcontractor to make modifications and revisions to said schedule.

9.4 Coordination

Subcontractor will coordinate its Work with the work of Contractor, other subcontractors, and the Owner's other contractors, if any, so that no delays or interference will occur in the completion of any part or all of the Project.

9.5 Suspension of the Work

Contractor may order Subcontractor to suspend, delay, or interrupt all or any part of the Work for a reasonable period of time as determined by Contractor, and Subcontractor shall not be entitled to additional compensation for such suspension, delay or interruption unless Contractor receives payment for same from the Owner.

10. CHANGES.

10.1 Changes

Contractor may, at any time, unilaterally or by agreement with Subcontractor, without notice to any sureties, make changes in the Work covered by DOAs issued incidental to this Subcontract Master Agreement. Any unilateral order or agreement under this Article shall be in writing. Subcontractor shall perform the Work as changed without delay.

10.2 Owner Changes or Discrepancies in Contract Documents.

Subcontractor shall submit to Contractor any claims for adjustment in the price, schedule, or other provisions of the DOAs or Subcontract Master Agreement due to changes by the Owner or discrepancies in the Contract Documents. Said claims shall be submitted in writing by Subcontractor in time to allow Contractor to comply with the applicable provisions of the Contract Documents. Contractor shall process said claims in the manner provided by and according to the provisions of the Contract Documents so as to protect the interest of Subcontractor and others, including Contractor. Adjustments to the value of each DOA shall be made only to the extent that Contractor is entitled to relief from or must grant relief to the Owner. Further, each adjustment to the value of each DOA shall be equal only to Subcontractor's allocable share of any adjustment in Contractor's contract with the Owner. Subcontractor's allocable share shall be determined by Contractor, after allowance of Contractor's normal overhead, profit, and other interest in any recovery by making a reasonable apportionment, if applicable, between Subcontractor, Contractor, and other subcontractors or persons with interest in the adjustment.

10.3 Changes Not Involving the Owner or Contract Documents.

For changes ordered by Contractor and not initiated by the Owner, Subcontractor shall be entitled to an equitable adjustment in the DOA price.

10.4 Price Quotations.

If requested by Contractor, Subcontractor shall, within seven (7) calendar days, submit a reasonable price quotation for proposed changes to DOA(s). If Subcontractor fails to do so and Contractor is required to submit a price quotation to the Owner, Contractor shall use its best estimate of the proposed changes as it affects the Subcontractor in its quotation to the Owner, which estimate shall be the maximum equitable adjustment due to Subcontractor.

10.5 Subcontractor Markups and Documentation.

The maximum Subcontractor markup for labor, material and equipment costs incurred due to changes or adjustments to a DOA is ten percent for overhead and five percent for profit. Contractor has the right to require documentation of all costs incurred as a result of a change or adjustment to a DOA.

11. TERMINATION.

11.1 Termination for Default.

With respect to each DOA or change order thereto, if, in the opinion of Contractor, Subcontractor shall at any time (1) refuse or fail to provide sufficient, properly skilled workmen, or materials of the proper quality, (2) fail to make payment to its subcontractors, suppliers, or materialmen, (3) fail in any respect to prosecute the Work according to the current schedule(s), (4) cause, by any action or omission, the stoppage or delay of, or interference with, the work of Contractor or any other builders or subcontractors, (5) disregard laws, ordinances, rules, regulations, or orders of the public authority having jurisdiction, or (6) fail to comply with the provisions of this Subcontract Master Agreement or the Contract Documents, then, after three (3) days' written notice, Contractor, at its option, without voiding the other provisions of the Subcontract Master Agreement and without notice to the sureties, if any, may (i) take such steps as are necessary to overcome the condition, in which case Subcontractor shall be liable to Contractor for the cost thereof, (ii) terminate the Subcontract Master Agreement and any or all DOAs in progress for default, and/or (iii) seek specific performance of Subcontractor's obligations hereunder, it being agreed by Subcontractor that specific performance may be necessary to avoid irreparable harm to Contractor and/or the Owner. In the event Contractor elects to take such steps as are necessary to overcome the condition, Contractor shall be entitled to withhold from any payments otherwise due Subcontractor on any or all DOAs the costs and liabilities incurred by Contractor to overcome same. In the event



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of termination for default, Contractor may, at its option (a) enter on the premises and take possession, for the purpose of completing the Work, all materials and equipment of Subcontractor, (b) require Subcontractor to assign to Contractor any or all of Subcontractor subcontracts and purchase orders involving the Project, and/or (c) either itself or through others complete the work by whatever methods Contractor may deem expedient. In case of termination for default, Subcontractor shall not be entitled to receive any further payment until the Work shall be fully completed and accepted by the Owner. At such time, if the unpaid balance of the price to be paid shall exceed the expenses incurred by Contractor, such excess shall be paid by Contractor to Subcontractor. If such amount due Contractor shall exceed such unpaid balance, then Subcontractor shall pay Contractor the difference.

11.2 Termination for Convenience.

Contractor shall have the right to terminate the Subcontract Master Agreement and any or all DOAs for its own convenience for any reason or no reason by providing Subcontractor with a written notice of termination, to be effective upon receipt by Subcontractor. If Subcontractor is terminated for convenience, Subcontractor shall be entitled to be paid a portion of the DOA price(s) based on the reasonable value of work properly performed prior to termination, plus reasonable direct closeout costs. In no event shall Subcontractor be entitled to recover anticipated profits on unperformed portions of the Work. Subcontractor's remedy under this Article shall be exclusive.

11.3 Wrongful Termination.

If Contractor wrongfully exercises any option under subparagraph 11.1 above, Contractor shall be liable to Subcontractor for the reasonable value of work properly performed by Subcontractor prior to Contractor's wrongful action, plus, in the case of a wrongful termination for default, reasonable direct closeout costs. Subcontractor's remedy under this subparagraph shall be exclusive. Nothing herein shall bar withholdings or off-sets by Contractor permitted by other provisions of this Subcontract Master Agreement.

12. CLAIMS AND DISPUTES.

12.1 Due to Owner or Contract Documents.

In case of any dispute between Contractor and Subcontractor arising out of any action of the Owner or involving the Contract Documents, Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to the Owner by the terms of the Contract Documents and by any and all preliminary and final decisions or determinations made by the party, board, or court so authorized in the Contract Documents, or by law, whether or not Subcontractor is a party to such proceedings. In case of such dispute, Subcontractor will comply with all provisions of the Contract Documents allowing a reasonable time for Contractor to analyze and forward to the Owner any required communications or documentation. Contractor will, at its option, (1) present to the Owner, in Contractor's name, or (2) authorize Subcontractor to present to the Owner, in Contractor's name, all of Subcontractor's claims and answer the Owner's claims involving Subcontractor's Work, whenever Contractor is permitted to do so by the terms of the Contract Documents. Contractor will further invoke on behalf of Subcontractor, or allow Subcontractor to invoke, those provisions in the Contract Documents for determining disputes. If such dispute is prosecuted or defended by Contractor, Subcontractor agrees to furnish all documents, statements, witnesses, and other information required by Contractor, and to pay or reimburse Contractor for Subcontractor's allocable share of costs incurred in connection therewith, including, without limitation, attorneys' fees. The price of the applicable DOA shall be adjusted by Subcontractor's allocable share determined in accordance with the Article entitled "Changes".

12.2 Not Involving Owner or Contract Documents.

With respect to any controversy between Contractor and Subcontractor not involving the Owner, Contractor shall issue a decision, which shall be followed by Subcontractor, without interruption, deficiency, or delay. If the Subcontractor is correct as to the controversy, Subcontractor shall be entitled to an equitable adjustment in the contract price as its sole remedy. Notification of any such claim for equitable adjustment must be asserted in writing within ten (10) days of the occurrence of the event giving rise to the claim; otherwise, no such claim is valid.

12.3 Direct Discussions.

All claims by Subcontractor seeking adjustment or interpretation of contract terms, payment of money, extension of time, or other relief with respect to the Subcontract Master Agreement or DOA(s) related thereto, shall be subject to dispute mitigation as a condition precedent to litigation. Said dispute mitigation shall consist of direct discussions between representatives of Subcontractor and Contractor who shall have the necessary authority to resolve the controversy and who shall meet in person to conduct such discussions.

12.4 Written Notice.

Notwithstanding any other provisions of the Master Subcontract Agreement, DOAs or Contract Documents, all claims by Subcontractor seeking adjustment or interpretation of contract terms, payment of money, extension of time, or other relief with respect to the Subcontract Master Agreement or DOA(s) related thereto, must be made in writing within ten (10) days after the occurrence of the event giving rise to the claim; otherwise, Subcontractor waives such claim.



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12.5 Dispute Resolution.

12.5.1 Jury Waiver. Each party hereto acknowledges and agrees that due to the specialized nature of construction litigation, any controversy that may arise under this Agreement is likely to involve complex issues. **THEREFORE, THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

12.5.2 Mediation. To the extent not resolved under § 12.3 *Direct Discussions*, above, any dispute arising from or relating to this Agreement or the alleged breach thereof shall, at the Contractor's sole option, be submitted for mediation administered by the American Arbitration Association under its *Construction Industry Mediation Procedures*. Should the Contractor opt to mediate, the mediation shall take place in Fairfax County, Virginia.

12.5.3 Arbitration. Should the Contractor opt not to mediate or, alternatively, should the parties be unable to resolve the dispute through mediation, the parties further agree that any unresolved dispute arising out of or relating to this Agreement or the alleged breach thereof shall be settled by arbitration administered by the American Arbitration Association in accordance with its *Construction Industry Arbitration Rules*, subject to the exceptions set forth in §§ 12.5.4 and 12.5.5, below. All claims, demands for arbitration or counterclaims must contain a statement that expressly states the aggregate amount of the party's claims. The arbitration shall take place in Fairfax County, Virginia, and shall be governed by the laws of the place of the Work. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The foregoing agreement to arbitration shall be specifically enforceable in any court of competent jurisdiction.

12.5.4 Arbitration Procedures. If the amount in dispute is less than or equal to seventy-five thousand dollars (\$75,000.00), discovery shall be limited to written document requests and the exchange of documents, with all other discovery, including depositions, explicitly excluded. If the amount in dispute is over seventy-five thousand dollars (\$75,000.00), discovery shall consist of written discovery, the exchange of documents, and no more than five (5) depositions of four (4) hours or less each. Hearings shall take place pursuant to the standard procedures of the *Construction Arbitration Rules* that contemplate in-person hearings. The arbitrator(s) shall have no authority to award punitive damages or other damages not measured by the prevailing party's actual damages, except as required by statute. The arbitrator(s) shall not award consequential damages in any arbitration initiated under this Section. The standard provisions of the *Construction Rules* shall apply except as otherwise noted herein. The arbitrator(s) shall have the authority to allocate arbitration fees and costs among the parties, but may award attorneys' fees only where explicitly permitted by law or contract provision.

12.5.5 Number of Arbitrators. Unless the amount in dispute exceeds two hundred and fifty thousand dollars (\$250,000), a single arbitrator shall hear any controversy that may arise under this Agreement. If the amount in dispute is equal to or exceeds two hundred and fifty thousand dollars (\$250,000), the Contractor, at its sole option, may bring suit in any court of competent jurisdiction or elect to pursue arbitration before a panel of three arbitrators. Otherwise, such disputes will be heard by a single arbitrator.

12.5.6 Confidentiality. Except as required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. The parties agree that 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. In such event, the other party shall be required to present such evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver shall not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.

12.5.7 Resolution of Dispute Involving the Owner or arises from the Owner's Contract Documents. If a dispute or claim of any value involves or is alleged to involve the Owner or arises from the Owner's Contract Documents, the Contractor, at its sole option, may bring suit in a court of competent jurisdiction or otherwise pursue resolution of the claim through the Owner's Claims process as contemplated by §§ 10.2 and 12.2 of these *Standard Terms and Conditions*. Should the Contractor opt to bring suit in a court of competent jurisdiction or otherwise pursue resolution of the claim through the Owner's Claims process, the Subcontractor is explicitly barred from initiating or pursuing any arbitration or litigation until that process is complete.

12.6 Claims Against Subcontractor.

In the event that a mechanic's lien claim, payment bond claim or other claim is filed against Contractor, the Owner or Contractor's payment bond by any employee, subcontractor or supplier of Subcontractor or other person in relation to the Work of Subcontractor, Subcontractor shall have the claim discharged by posting a bond with appropriate authorities, or otherwise, within ten (10) days of notice thereof. In the event such claim is not so discharged, Contractor shall have the right to terminate this Subcontract Master Agreement and any active DOAs for default, and/or bond-off said claim(s) and recover from Subcontractor all costs incurred as a result thereof, including, without limitation, bond premiums and attorneys' fees.



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12.7 Continuing Performance Required.

Pending final resolution of any claim, dispute or other matter in question between Contractor and Subcontractor, Subcontractor shall continue performance under the Subcontract Master Agreement and DOA(s).

12.8 Contractor Payment Bond.

The terms and conditions of the Subcontract Master Agreement and any DOA(s) are incorporated by reference into any payment bond posted by Contractor for the Project.

13. WARRANTY.

Subcontractor warrants its Work to Contractor on the same terms, and for the same period, as Contractor warrants the Work to the Owner under the Contract Documents; and with respect to Subcontractor's Work, Subcontractor shall perform all warranty obligations and responsibilities assumed by Contractor under the Contract Documents.

14. INSPECTION AND ACCEPTANCE.

14.1 Inspection, Rejection and Replacement.

Subcontractor shall provide appropriate access to the Work at all reasonable times for inspection by Contractor or the Owner, whether at the Project site or at any place where the Work may be in preparation, manufacture, storage, or installation. Subcontractor shall promptly replace or correct any Work which Contractor or the Owner may reject as failing to conform to the requirements of the DOAs or the Subcontract Master Agreement. If Subcontractor does not do so within a reasonable time, Contractor shall have the right to do so, and Subcontractor shall be liable to Contractor for the cost thereof. If, in the opinion of Contractor, it is not expedient to correct or replace all or any part of rejected Work, then Contractor at its option, may deduct from the payments due or to become due to Subcontractor such amount as, in Contractor's reasonable judgment, will represent (i) the difference between the fair value of the rejected Work and the value thereof if the Work complied with the Subcontract Master Agreement and its applicable DOAs, or (ii) the cost of correction, whichever is higher.

14.2 Remedy for Wrongful Rejection.

Subcontractor's remedy for wrongful rejection of Work pursuant to this Article shall be limited to Contractor's remedy under the Contract Documents if rejection is by the Owner or by Contractor at request of the Owner. Contractor shall be liable for any increased costs caused by its wrongful rejection of Work if the Owner was not involved in said rejection.

14.3 Use Not Acceptance.

The Work shall be accepted according to the terms of the Contract Documents. However, unless otherwise agreed to in writing, occupancy or use of the Work by the Owner or Contractor shall not constitute acceptance of the Work.

15. INCONSISTENCIES AND OMISSIONS.

Should inconsistencies or omissions appear in the Contract Documents, Subcontractor shall promptly notify Contractor in writing of same, and in any event, prior to performing any Work affected by such inconsistency or omission.

16. APPROVALS.

16.1 Owner Approvals.

Subcontractor warrants that it can and will obtain all requisite approvals from the Owner as to its eligibility to serve as a subcontractor, and that it can and will obtain the required approvals of all labor, materials and equipment comprising the Work as required by the Contract Documents.

17. REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS.

Subcontractor shall complete the form attached, *Subcontractor Information and Certifications*, to this Master Agreement which completed form shall constitute a material part of the Master Agreement. Subcontractor shall also inform Contractor of any material change in its status.

18. ASSIGNMENT AND SUBCONTRACTING.

Subcontractor shall not assign or transfer this Subcontract Master Agreement, or funds due hereunder, without the prior written consent of Subcontractor's surety, if any, and Contractor. All lower-tier subcontractors and purchase orders awarded by Subcontractor are subject to the provisions of the Subcontract Master Agreement, and Subcontractor shall insert therein all provisions necessary to enable Subcontractor to comply with the terms hereof.



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19. PATENTS AND ROYALTIES.

Subcontractor shall pay all royalties and license fees related to the Work. Subcontractor shall defend suits or claims for infringement of copyrights and patent rights related to the Work and shall indemnify and hold harmless Contractor and the Owner from and against all damages, costs or other expenses on account thereof, including, without limitation, attorneys' fees.

20. TAXES AND PERMITS.

20.1 Taxes.

Except as otherwise provided by the Contract Documents, Subcontractor agrees to pay, comply with, and hold Contractor harmless from and against the payment of all contributions, taxes, or premiums which may be payable by it under federal, state, or local laws arising out of performance of the Subcontract Master Agreement and its DOAs, and all sales, use, or other taxes of whatever nature levied or assessed against the Owner, Contractor, or Subcontractor arising out of this Subcontract Master Agreement and its related DOAs, including any interest or penalties. Subcontractor waives any and all claims for additional compensation because of any increase in the aforementioned taxes unless payment for said increase is specifically provided for in the Contract Documents.

20.2 Permits.

Subcontractor shall obtain and pay for all permits, licenses, fees, and certificates of inspection necessary for the prosecution and completion of the Work, and shall arrange for all necessary inspections and approvals by public officials.

21. LAWS, REGULATIONS, AND ORDINANCES.

Subcontractor shall strictly comply with all federal, state, and local laws, codes, ordinances, and regulations applicable to the Work, the Subcontract Master Agreement and its DOAs. Subcontractor shall be duly licensed to operate under the laws of the jurisdictions where the Project is located.

22. HEALTH AND SAFETY.

Subcontractor and all its employees and agents shall comply with the requirements of the Occupational Safety and Health Act as amended; current edition of the Department of the Army, Corps of Engineers, Safety and Health Requirements Manual EM385-1-1, and all other applicable health and safety laws and regulations. Subcontractor shall indemnify and hold Contractor and the Owner harmless from all liabilities, losses, costs, and expenses attributable to the failure of Subcontractor or its employees and agents to comply with said Act, laws, and regulations, including, but not limited to, any fines, penalties, corrective measures and attorneys' fees, regardless of cause or of the joint, comparative or concurrent negligence or gross negligence of Contractor, its officers, agents, employees or sureties. In the event that Contractor notifies Subcontractor of a violation of said Act for which Contractor deems Subcontractor to be responsible, Subcontractor agrees to immediately remedy said violation or bear the costs to have Contractor remedy the violation in accordance with the Article entitled "Subcontractor's Liability". The Subcontractor shall comply with the additional safety requirements stated herein.

23. LABOR.

23.1 Objections by Owner or Contractor.

Subcontractor and its lower-tier Subcontractors shall not employ anyone for Work related to DOAs issued incidental to the Subcontract Master Agreement whose employment may be objected to by Contractor or the Owner.

23.2 Strikes or Work Stoppage.

Should any workers performing the Work covered by any DOA or the Subcontract Master Agreement engage in a strike or other work stoppage or cease to work due to picketing or a labor dispute of any kind, said circumstances may be deemed a failure to perform the Work on the part of the Subcontractor and subject Subcontractor to the conditions and terms set forth in the Article entitled "Termination".

23.3 Labor Standards, Wage Rates and Certified Payrolls.

Subcontractor shall comply with all labor standards, wage rates, and certified payroll procedures identified in any Project Master Agreement, the *Payment Procedures and Requirements*, and this Subcontract Master Agreement.

24. EQUAL OPPORTUNITY.

24.1 No Discrimination.

In connection with the performance of Work under any DOAs and the Subcontract Master Agreement, Subcontractor agrees not to discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, age, handicap, or status as a disabled veteran or a veteran of the Vietnam Era. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. Subcontractor agrees to post notices in conspicuous places, available for



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employees and applicants for employment, prepared by Subcontractor, and approved by the government when required, setting forth the provisions of this Article.

24.2 Segregated Facilities.

Subcontractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Subcontractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this Article

24.3 Books and Records.

Subcontractor shall permit access to its books, records, and accounts by representatives of Contractor or the Owner for purposes of investigation to ascertain compliance with the provision of this Article.

24.4 Termination.

In the event of Subcontractor's noncompliance with the equal opportunity provisions of this Article, the Subcontract Master Agreement and any active DOAs may be terminated for default.

24.5 Subcontractors and Suppliers.

Subcontractor shall include the provisions of this Article in every lower-tier subcontract and purchase order. The requirements of this Article shall be in addition to any equal opportunity provisions of the Contract Documents.

25. INFORMATION REQUIRED BY OWNER.

In addition to the information to be provided by Subcontractor pursuant to other provisions of the Subcontract Master Agreement, Subcontractor hereby agrees to provide, at no additional cost to Contractor, and in a prompt and timely fashion so as not to disrupt the performance of Work issued by DOAs or the contract between Contractor and the Owner, any and all additional information relating to the Subcontract Master Agreement and Work which is required by the Contract Documents or by law.

26. CONFIDENTIALITY.

26.1 Confidential Information.

To the extent authorized by the law, Contractor and Subcontractor may wish, from time to time, in connection with Work contemplated under the Subcontract Master Agreement or any DOA, to disclose confidential information to each other ("Confidential Information"). Each party will use reasonable efforts to prevent the disclosure of any of the other party's Confidential Information to third parties for a period of three (3) years after the termination of the Master Agreement, provided that the recipient party's obligation shall not apply to information that is not disclosed in writing or reduced to writing and so marked with an appropriate confidentiality legend within thirty (30) days of disclosure; is already in the recipient party's possession at the time of disclosure thereof; is or later becomes part of the public domain through no fault of the recipient party; is received from a third party having no obligations of confidentiality to the disclosing party; is independently developed by the recipient party; or is required by law or regulation to be disclosed. In the event that information is required to be disclosed by law or regulation, the party required to make disclosure shall notify the other to allow that party to assert whatever exclusions or exemptions may be available to it under such law or regulation.

26.2 Trade Secrets.

Subcontractor agrees to maintain the strict confidence of Contractor's trade secrets. This includes information on the engineering, management, sales, and financial aspects of Contractor's business.

27. INTERPRETATION OF CONTRACT DOCUMENTS.

27.1 Order of Precedence.

It is the intention of the parties that all the terms of this Subcontract Master Agreement are to be considered as complementary. However, in the event that such an interpretation is not possible, the order of precedence of the documents forming this Subcontract Master Agreement and its DOAs shall be (1) the DOAs and modifications issued thereto; (2) this Subcontract Master Agreement, unless the Contract Documents impose a higher standard or greater requirement on Subcontractor, in which case the Contract Documents prevail; (3) the Contract Documents, unless the provisions of (2) apply.

27.2 Modifications.

In the event of a conflict between or among modifications, the later in date shall prevail; in the event of a conflict between or among the terms of the Subcontract Master Agreement, the higher standard or greater requirement for Subcontractor shall prevail.



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28. PROVISIONS GOVERNING WORKING CONDITIONS.

28.1 Submittals.

Subcontractor shall deliver to Contractor copies of shop drawings, cuts, samples and materials lists required by Contractor or the Contract Documents within sufficient time so as not to delay performance of the Project or within sufficient time for Contractor to submit the same within the time stated in the Contract Documents, whichever is earlier. Any deviation from the Contract Documents shall be clearly identified on shop drawings. Notwithstanding any general approval granted by Contractor or the Owner, all work shall strictly conform to the Contract Documents.

For each piece of installed equipment, Subcontractor shall provide three (3) copies of Operational and Maintenance Manuals for that equipment. Subcontractor shall provide these manuals to Contractor when the Delivery Order is approximately 90% completed. Submission of these manuals is a condition precedent to final payment.

Equipment warranty sticker containing warranty information, date of installation, and applicable service information must be attached to each piece of equipment installed by Subcontractor.

During construction the Subcontractor shall maintain two (2) current sets of as-built drawings, which reflect changes and deviations in the contract drawings as they are installed in the field. These drawings will be issued to the Contractor and will be a part of the "As Built" information at the completion of the work. The Owner may duplicate, use and disclose in any manner and for any purpose drawings delivered under this contract.

Subcontractor shall show the Contract Number and identifying item numbers, if applicable, on all data or transmittals submitted.

28.2 Reporting to Contractor.

Subcontractor shall submit a Daily Report to Contractor identifying: staffing, work descriptions and equipment used. The report format must be acceptable to Contractor.

28.3 Working Hours.

Unless specifically otherwise provided in the DOAs, the working hours for the Subcontractor shall conform to regular working hours. All job site work required hereunder shall be performed Monday through Friday between the hours of 7:00 a.m. and 4:30 p.m. The Subcontractor shall obtain approval for any deviation from the regular working hours or days by submitting a written request to be received at least three (3) working days in advance for the approval of the Contractor. The Contractor retains the option to revise the Subcontractor's work schedule as necessary to accommodate the project schedule, upon written notice to the Subcontractor.

28.4 Trash and Debris.

Clean up of trash and debris resulting from the Subcontractor's operations shall be performed on a continual basis to prevent accumulation. All trash and debris shall be removed on a daily basis. Care must be exercised by the Subcontractor to avoid any waste and scrap being scattered by the wind.

If, in the sole opinion of the Contractor, the job is not being maintained in a clean and safe condition as it relates to the work of this Subcontract, the Contractor may have the condition corrected and charge the cost to the Subcontractor after eight (8) hour prior notification to the Subcontractor. For the purpose of this paragraph only, Notice shall be defined as written instructions handed to the Subcontractor's foreman or faxed to the Subcontractor's home office.

28.5 Shutdowns, Cutovers, and Interference with Operations.

Shutdowns and cutovers, depending upon their types, may be required to be scheduled on weekends, at night or during holiday periods. Any outages must be scheduled with a minimum of fourteen (14) days advance notice to the Owner and the Contractor. The Subcontract Price is deemed to include all necessary overtime and all premium time, if any, that is required by the Subcontractor to complete the shutdowns or cutovers, including the attendance of any trades that are required as standby personnel, but are not employed by the Subcontractor unless specifically itemized and excluded in the DOA. Any unscheduled outage or interruption of service must be restored immediately; this includes any and all overtime or expediting necessary to restore service as early as possible and shall be performed without additional cost to the Contractor.

The Subcontractor agrees to carefully schedule with the Owner and the Contractor all activities which may in any way disrupt or interfere with operation of the Owner's facilities, to cease any such activities immediately upon request from the Owner or upon the reasonable request of the Contractor, and not to resume such activities until approval is obtained from the Owner and the Contractor.

28.6 Hoisting.

It will be the sole responsibility of the Subcontractor to supply his own hoisting. All hoisting supplied by the Subcontractor will require the prior approval of the Contractor.

28.7 Existing Facilities.

The Subcontractor shall be responsible for the protection of all existing facilities and utilities from damage during the performance of the work. All barricades, flagging, bridging, temporary protection, etc., shall be provided by the Subcontractor as required by the work and shall be included in the Subcontract Price.



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The Subcontractor shall include the cost of all cutting, fitting, or patching of its work, which may be required in connection with the proper installation of its work, as necessary to fit the work of other subcontractors or existing conditions. For example, cutting of concrete shall be done on two sides to avoid spalling.

The Subcontract Price includes any and all non-continuous work, required by Contractor and necessary to meet job progress. The Subcontractor shall also recognize that completion of portions of the work may be required in order to provide occupancy or parts of the project prior to its final completion and that such work may not necessarily be in sequence with other work by the Subcontractor. The cost of all such non-continuous work shall be included in the Subcontract Price.

No structural concrete or steel is to be cut without permission of the Contractor. The Subcontractor shall not endanger any work by cutting or digging and shall not cut, damage, or alter the work of any other subcontractor and shall be held responsible for any such cutting, damage or alterations. Approval shall be received from the Contractor before any cutting, fitting, or patching. No digging, cutting, welding or burning will be done without the appropriate permits.

28.8 Meetings.

Each Subcontractor shall have responsible representation at Coordination Meetings held when scheduled by the Contractor or the Owner. These meetings will be held as often as required to arrange for satisfactory coordination of all trades so as not to impede job progress and to accomplish work in a manner that will ensure the desired results.

28.9 Covering Work.

The Subcontractor shall not encase or cover the work of other subcontractors or work installed by the Subcontractor until same has been completed and approval has been obtained from the Contractor and required authorities. If the Subcontractor does cover up such work which is not completed and approved, the Contractor may require same to be exposed for inspection at no charge to the Contractor. The Subcontractor shall assume all costs for replacement of all finished or partially finished work required for such inspection.

28.10 Layout.

Subcontractor shall be responsible for all layout of its work from control lines or other reference points defined by the Contractor. The Subcontractor shall be responsible for verifying all control lines or reference points defined by the Contractor and shall fully understand the layout prior to using it. In the event of an error in the Subcontractor's layout, the Subcontractor shall correct all defective work at no cost to the Contractor.

28.11 Work of Others.

The Subcontractor shall review the surfaces and work provided by others, and shall notify the Contractor, in writing, of any defect detrimental to proper procedures, prior to the commencement of his work; otherwise, it shall be deemed that the Subcontractor has accepted the conditions of such surfaces and work and will be liable for all consequences resulting therefrom.

28.12 Subcontractor's Personnel.

The Subcontractor shall assign a full time on site supervisor acceptable to the Contractor from start of DOA fieldwork until final acceptance. Subcontractor shall furnish work, pager, cell phone, and residence phone numbers for site supervisor, project manager, and general manager.

Subcontractor is fully responsible for the performance and conduct of its employees and the employees of its lower tier subcontractors and suppliers at all times while on the Owner's property. The Subcontractor's employees the employees of its lower tier subcontractors and suppliers shall conduct themselves in a proper, efficient, courteous and businesslike manner. The Subcontractor shall not allow its employees or the employees of its lower tier subcontractors and suppliers to perform work while under the influence of alcohol, drugs, or any other incapacitating agent.

The Subcontractor's employees and the employees of its lower tier subcontractors and suppliers will be required to wear identification badges any time they are on the Owner's facilities or at the Project site. Passes and badges issued to the Subcontractor or its employees shall not negate the requirement for employee identification.

28.13 Storm Water and Erosion.

During the course of construction, the Subcontractor shall all necessary steps to prevent erosion at the construction site and to provide sedimentation controls at all outfalls to drainage ways including, but not limited to, area inlets, storm drain pipes, ditches, and roadway gutters related to Subcontractor's work and its staging areas in accordance with any regulations, Owner requirements, and applicable storm water management plan.

28.14 Temporary Facilities.

Subcontractor shall, as a part of the Subcontractor Price, supply, install, properly maintain and remove all temporary construction equipment, facilities, utilities and consumables necessary for full and complete performance of the work. Such items shall include, but not be limited to: (i) all temporary buildings, including change rooms, (ii) first aid facilities, (iii) fuels and lubricants, (iv) heating fuels, (v) transportation facilities on and off site, (vi) communication facilities, (vii) compressed air and gases, (viii) maintenance of Subcontractor's laydown, storage and work areas and roads within such areas, (ix) electric distribution wiring, (x) connections to, and disconnections from, the power source shall be by the Subcontractor, (xi) all cranes and other necessary equipment for lifting and moving equipment, (xii) all



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stress-relieving equipment and complete stress relieving operations, (xiii) all small tools, (xiv) all standard expendable or consumable construction items and supplies, (xv) site clean-up and conveyance to dumpsters, and (xvi) containers, ice, cups for drinking water.

28.15 Storage Space.

Due to the limited availability of storage space on the jobsite, Subcontractor shall coordinate the delivery of all equipment and materials to allow for timely installation and erection. Subcontractor shall be responsible for the storage, protection, and security of all materials falling under his jurisdiction on the jobsite.

- a. Delivery Hours: Materials will be received only during established working hours, Monday through Friday.
- b. Subcontractor shall submit to Contractor, for review and approval, the size and location of the lay-down area requirements.

29. SITE SAFETY REQUIREMENTS

29.1 MSDS Information.

Prior to the start of work, the Subcontractor shall submit to the Contractor a complete list of all products that will be used incidental to performing the Subcontractor's work, including solvents and other incidentals that could cause hazard to life or property. The Subcontractor shall provide the Contractor an updated list from time to time when new materials are required. The Subcontractor shall include with the list of products a current Material Safety Data Sheet (MSDS) for each product. No work shall start until such time as the above requirements are met. Further, submission of the information required by this paragraph is a condition precedent to payment.

29.2 Stop Work Orders.

If, in the opinion of the Contractor, the Subcontractor or its lower tier subcontractors or suppliers is conducting its work in an unsafe manner, the Contract retains the right to verbally issue a Stop Work direction to the Subcontractor. The Subcontractor shall immediately stop its work and take all actions necessary to correct the condition and provide a safe workplace. Once the Subcontractor notifies the Contractor the condition has been corrected and the Contractor is satisfied the Subcontractor has corrected the deficient condition, the Subcontractor can resume work. If it is adjudicated that the Contractor stopped work in bad faith, the Subcontractor shall be entitled to a schedule extension proportionate to the length of the bad faith work stoppage.

29.3 Safety Orientation Meeting.

Subcontractor's personnel may be required to attend a safety orientation meeting upon entering the jobsite. The Subcontract Price shall include all costs for Subcontractor's employees and the employees of its lower tier subcontractors or suppliers to attend these orientations.

29.4 Fall Hazards.

Barricades, railing, opening covers, and other protective devices which have been installed by the Contractor or others and removed by Subcontractor's employees for any reason must be guarded by the Subcontractor while open and immediately replaced by the Subcontractor prior to the Subcontractor or its employees leaving the immediate area of the removal. Additionally, in the areas where the Subcontractor is vertically transporting materials or personnel, the Subcontractor shall provide secondary railing, barricades, warning signs, spotters, and other protective measures as required by OSHA to secure the safety of the entire hoisting area.

29.5 Prohibited Items.

No radios, cassette or CD players, "Walkmans," or other portable music players are allowed on the job site. Additionally, neither the Subcontractor, the Subcontractor's employees, nor anyone the Subcontractor may be responsible for shall use any music or communications device while at the job site if the use of the device interferes with the person's ability to hear and respond to warnings, commands, or directives. A hands-free device for a cellular telephone or two way radio is considered a communications device for the purpose of complying with this section.

No intoxicants are allowed on the job site. This includes liquor, beer, wine, drugs or hallucinogens of any kind whatsoever. Additionally, no person who under the influence, or in the opinion of the Contractor under the influence, of any of the above shall be allowed on the job site. The Subcontractor or Contractor will remove any workman from the Project immediately and said workman shall not return if, in the Contractor's opinion, the workman is under the influence of an intoxicant.

29.6 Incident and Visitor Reporting.

In the event of a near miss, accident, injury, or fatality, the Subcontractor agrees to notify the Contract immediately and to provide a copy of all Accident and Workmen's Compensation reports to the Contractor within twenty four (24) hours. The Subcontractor shall also notify OSHA as required. The Subcontractor shall be exclusively liable for any and all fines, levies, or fees resulting from its failure to notify OSHA or any administrative agency, and shall indemnify, defend and hold the Contractor harmless for any fines, levies, or fees

Subcontractor agrees to notify the Contractor as soon as possible, but not more than one (1) hour, after the start of any visit to the Project site by an Owner's, federal, state, or local safety official.

29.7 Scaffolding.

If the work required involves the use of scaffolding and/or elevated platforms, the scaffolding must be inspected daily by a competent person in the employ of the Subcontractor. On a weekly basis, the Subcontractor shall certify to the Contractor that daily inspections have been made. The Subcontractor's certifications must identify: (i) the name of the Subcontractor's competent person making the inspection,



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(ii) the date of each inspection, (iii) any deficiencies encountered during the inspection, and (iv) the corrections performed to remedy the deficiencies. In the event of any deficiency, the Subcontractor shall immediately suspend use of the scaffold until all deficiencies are corrected and a competent person inspected the scaffolding.

29.8 Drug Free Workplace.

The Subcontractor shall promote a drug free workplace. In the event of an accident, incident, or recordable event, the Subcontractor shall require its employees, agents, subcontractors and any employees thereof involved in the event to submit to a drug test performed by a qualified medical laboratory. In the event the employee or employees involved in the event fail to submit to such test within twenty four hours of the event, said employee or employees shall be prohibited from returning to the project site for the duration of the Project.

29.9 Subcontractor's Failure to Comply.

In the event the Subcontractor, a Subcontractor's employee or anyone the Subcontractor may be responsible for is removed, banned, or restricted from the job site, for any reason, by the Owner, Contractor, or other entity, Subcontractor is not entitled to a change in Subcontract Price or Schedule.

30. MISCELLANEOUS PROVISIONS.

30.1 Communication with Owner and Lower Tier Subcontractors.

Subcontractor understands and agrees that it will not communicate with the Owner except to be cordial and polite. The Subcontractor shall communicate directly and solely with the Contractor concerning any questions, problems, changes or other communications concerning the Owner or the Owner's Contract Documents. Except for cordial and polite conversation of no consequence to the Work, the Subcontractor may only communicate with the Owner if the Contractor gives the Subcontractor explicit direction to do so. Similarly, the Subcontractor shall require its subcontractors at any tier to direct all communications concerning the Work to the Contractor or the Owner through the Contractor.

30.2 Authorized Representative.

Subcontractor shall have a competent and experienced representative, authorized to act on its behalf and who is acceptable to Contractor, present at the site at all times during the performance of the Work. Subcontractor further agrees that it will, at the request of Contractor, for just cause, forthwith discharge and remove from the Project any person designated by Contractor. The right of Contractor to request the discharge of any persons employed by Subcontractor or its sub-subcontractors shall not be construed to constitute Contractor as employer of any persons employed by Subcontractor or its sub-subcontractors.

30.3 Notices.

All notices shall be addressed to the parties at the addresses set out herein, and shall be considered as delivered when post-marked, if dispatched by registered or certified mail, or when received in all other cases.

30.4 Severability and Waiver.

The partial or complete invalidity of any one or more provisions of this Subcontract Master Agreement or its DOAs shall not affect the validity or continuing force and effect of any other provision. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of the Subcontract Master Agreement or its DOAs, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right as respects further performance.

30.5 Complete Agreement.

The recitals and Exhibits hereto are incorporated herein and are made a part hereof. No change or modification of the Subcontract Master Agreement or any DOA(s) shall be valid unless the same is in writing and signed by the parties hereto. No waiver of any of the provisions of the Subcontract Master Agreement or any DOA(s) or other agreements referred to herein shall be valid unless in writing and signed by the party against whom it is sought to be enforced. The Subcontract Master Agreement and any DOA(s) contain the entire agreement between the parties relating to the Work, and all prior negotiations between the parties are merged into the Subcontract Master Agreement or any DOA(s), and there are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, expressed or implied, between the parties other than as herein set forth.

30.6 Provisions Required by Law.

Notwithstanding the provisions of paragraph 28.4 above, each and every provision of any laws and clauses required by law to be inserted into the Subcontract Master Agreement and DOA shall be deemed to be inserted therein and incorporated by reference and the Subcontract Master Agreement and DOA shall be read and enforced as though such laws and clauses were expressly set forth therein.

30.7 Successors.

All terms of the Subcontract Master Agreement or any DOA(s) shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.



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30.8 Governing Law.

Notwithstanding the place where the Subcontract Master Agreement and any DOA(s) may be executed by any of the parties hereto, the parties expressly agree that all terms and provisions hereof shall be construed and enforced in accordance with the laws of the jurisdiction where the Project is located.

31. SIGNATURES.

I _____, the _____ of _____ (“Subcontractor”),
(Printed Name) (Title) (Full Company Name)

hereby understand and agree that the Subcontractor will be bound by and agrees to these *Standard Terms and Conditions* for the Subcontract for Construction for all work undertaken under a *Delivery Order Agreement* between Contractor and Subcontractor. Subcontractor further agrees that these *Standard Terms and Conditions* shall be incorporated into each *Delivery Order Agreement* as if reprinted therein in their entirety.

(Signature)

(Date)

(Federal Tax Identification Number)

(DUNS Number)