



THE CROMEENS LAW FIRM, PLLC

Construction Counselors at Law

The Cromeens Law Firm - 2023
General Provisions of Master
Subcontract Agreement.

Construction Contract Review & Creation • Liens • Collections • Construction Litigation

2023 GENERAL PROVISIONS OF MASTER SUBCONTRACT AGREEMENT

Table of Contents

ARTICLE 1	1
The Contract Documents and Scope of Work.....	1
ARTICLE 2.....	2
Payments	2
ARTICLE 3	5
Obligations of Subcontractor; Releases and Affidavits of Payment.....	5
ARTICLE 4	7
Changes, Extras and Delays.....	7
ARTICLE 5.....	8
Payment and Performance Bonds	8
ARTICLE 6.....	8
Indemnification and Insurance	8
ARTICLE 7	12
Scheduling, Time of Performance, Default and Contractor's Remedies.....	12
ARTICLE 8	15
Compliance with Laws, Permits and Notices.....	15
ARTICLE 9	16
Protection of Work, Safety and Warranties	16
ARTICLE 10	17
Defective Work.....	17
ARTICLE 11	17
Clean-up and Environmental Compliance	17
ARTICLE 12	18
Use of Contractor's Equipment and Materials	18
ARTICLE 13	18
Restrictions on Assignments, Supervision and Cooperation with Others.....	18
ARTICLE 14	18
Disputes, Arbitration and Litigation.....	18
ARTICLE 15	19
Miscellaneous Provisions	19

Summary of Comments on Final ICAA Contract.pdf

This page contains no comments

ARTICLE 1

The Contract Documents and Scope of Work

1.1 The Contract Documents for this Subcontract Agreement (also referred to herein as, the "Subcontract", the "Agreement", or the "Subcontract Agreement") consist of these General Provisions of Subcontract Agreement, the Master Subcontract Agreement, including any exhibits or attachments, the Prime Contract between the Contractor and Owner, including any conditions set forth therein, the drawings, plans, and specifications, issued prior to and any modifications, change orders, or amendments issued in writing after the execution of this Subcontract Agreement. The Subcontract Agreement and these General Provisions may be signed electronically and returned to Contractor or signed and returned to Contractor via electronic mail or facsimile. Prior to the execution of any Work Order, Contractor shall provide to the Subcontractor copies of executed Contract Documents to which the Subcontractor will be bound.

1.2 If this Subcontract Agreement is signed before Contractor signs the Prime Contract with the Owner, this Agreement shall constitute a pre-bid agreement which cannot be canceled by Subcontractor and shall become binding upon award of the Prime Contract to Contractor. If no such Prime Contract is signed by Owner and Contractor, this Subcontract Agreement shall have no further effect.

1.3 Subcontractor acknowledges that it has read the Contract Documents and is familiar with such documents and agrees not to violate the terms of same. Subcontractor believes that there are no ambiguities in the Contract Documents and any documents made available to bidders and that Subcontractor has no unanswered questions regarding its Work or the Contract Documents. Further, Subcontractor represents that it has inspected the Project site and has satisfied itself as to the condition thereof and that the Contract Sum is sufficient to cover all the Work, including all foreseen and unforeseen risks, hazards, and difficulties in connection therewith, including without limitation, any concealed or subsurface conditions at variance with the conditions indicated by the Contract Documents or other documents furnished Subcontractor for its information. In the event that Subcontractor discovers any ambiguities or potential ambiguities in the Contract Documents, Subcontractor shall immediately call these to the attention of Contractor. Subcontractor acknowledges that the Owner may elect to incorporate certain measures into the design and construction of the Project with the intent that the Project can achieve certain benefits to the environment, including certification under the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") Rating System (collectively, the "Green Measures"). As such, should Owner desire to incorporate these Green Measures into the Project, Subcontractor is placed on notice that Owner is thereby seeking to achieve a certain designation or denomination provided by a governmental body or other organization to recognize the fact that Green Measures have been utilized or employed in the design and/or construction of the Project, to the extent the Subcontractor has been notified in writing of such deployment. In such event, Subcontractor shall be bound in the same manner and to the same extent that Contractor is bound to Owner to comply with and deliver its Work in a manner that assists with the achievement of such Green Measures as set forth in the Contract Documents and shall take all steps required of Subcontractor necessary to obtain the Green Measures. Subcontractor represents that it is an expert in the particular line of lines of Work, as defined in this Subcontract Agreement, that it is competent to know that the materials, methods and apparatus specified for the Work are sufficient and suitable to secure the results contemplated by the Contract Documents, and that it has or will have sufficient forces to complete the Work in accordance with the Project schedule, and it acknowledges that prior to the execution of this Subcontract, it has (a) by its own independent investigation ascertained and fully evaluated the Work required by this Subcontract Agreement and the conditions and difficulties involved in performing the Work; (b) verified all information furnished by Contractor or others, satisfying itself as to the correctness and accuracy of that information; (c) reviewed and accepted the information regarding the Owner's ability to pay for the Work as provided in Paragraph 2.3 hereof; (d) to the extent applicable, received all information as required by Chapter 151 of the Texas Insurance Code concerning consolidated insurance programs (OCIPs, CCIPs, etc.) ten days prior to the execution of the Subcontract; and (e) possesses the requisite training and ability to meet the requirements to obtain the Green Measures for the Project, if any. Any failure by Subcontractor to independently investigate and become fully informed of the conditions and difficulties involved in performing the Work or the Owner's ability to pay for same will not relieve Subcontractor from its responsibilities hereunder. If any part of Subcontractor's Work depends on the work of Contractor or any other subcontractor, Subcontractor shall inspect such work and promptly report to Contractor in writing any defects or inadequate performance which adversely affects Subcontractor's Work. If in the performance of the Work, Subcontractor finds latent, concealed, or subsurface physical conditions which differ materially from the conditions Subcontractor reasonably anticipates based upon its inspections and evaluation of the project site, the subcontract amount and/or the project schedule shall be adjusted by Change Order. Failure to make such report within twenty-four (24) hours of Subcontractor's discovery of the defect or inadequate performance, whether such discovery is actual or constructive, shall be deemed a waiver of any Subcontractor claim relating to same, regardless of whether Contractor is prejudiced by the lack of notice. If there appear to be any defects, variations or discrepancies of dimensions, quantities or other matters set forth in the plans, specifications and other portions of the Prime Contract, Subcontractor shall promptly notify Contractor of same in writing. Failure to provide such written notice within twenty-four (24) hours of the discovery of such defect, variation or discrepancy, whether such discovery is actual or constructive, shall be deemed a waiver of any Subcontractor claim related to

Page: 2

Author: Date: 9/20/2023 2:53:52 PM

You are bound by the terms of the Prime, you should get a copy.

Author: Date: 9/20/2023 2:54:00 PM

"No Surprise Clause"

Make sure you thoroughly inspect the field conditions and review of the documents. If there is anything that would cause your cost to increase, you are aware of and there is "no surprise."

Author: Date: 9/20/2023 2:54:07 PM

"Ability to Sue Everyone" Clause

If you find a defect that causes the cost of your work to increase, you must report it to the GC within 24 hours.

Author: Date: 9/20/2023 2:54:15 PM

If you do not let the GC know of something that would cause the cost of your work to increase, you waive your right to any additional money.

same, regardless of whether Contractor is prejudiced by the lack of notice. Additionally, regardless of measurements set forth in the drawings, plans, specifications or other portions of the Prime Contract, Subcontractor is responsible for performing all field measuring prior to performing labor and purchasing, fabricating and/or installing materials. If there appears to be any discrepancy between the measurements set forth in the drawings, plans, specifications or other portions of the Prime Contract and the field measurements taken by Subcontractor, Subcontractor shall promptly notify Contractor of the same in writing and request instructions on how to proceed from the Contractor. Contractor will, upon such request, provide written instructions on how to proceed. Should Subcontractor disregard any such discrepancies and proceed with the Work, Subcontractor will be responsible for all costs associated with Work performed and materials purchased, fabricated and/or installed based on the incorrect measurements. In addition, Subcontractor will be responsible for all costs associated with the corrective work required and Contractor shall be relieved of any liability in connection therewith. Subcontractor warrants, represents and agrees that all requisite approvals from the Owner as to its eligibility to serve as a Subcontractor as well as the approval of all materials and performance of the Work as required by the Contract Documents, are obtainable.

1.4 If the Prime Contract states a hierarchy of controlling documents in the event of a conflict, the hierarchy stated in the Prime Contract shall control. In the event that the Prime Contract does not state a hierarchy of controlling documents, then, in the event of a conflict, the Subcontract Agreement and these General Conditions of the Subcontract Agreement shall control over the remainder of the Contract Documents. In the event of a conflict between any of the remaining Contract Documents, the most stringent requirement shall control. Subcontractor assumes to Contractor all obligations that Contractor assumes to Owner in the Prime Contract, to the extent such obligations include and/or affect in any way the Work subcontracted herein. If Subcontractor commences any Work on the Project, including but not limited to mobilization, Subcontractor shall be deemed to have accepted all terms and conditions set forth in the Subcontract Agreement and General Provisions irrespective of whether such documents have been executed by Subcontractor.

1.5 Contractor reserves the absolute right to delete labor, materials, sections of the specifications or any other part, portion or section of Subcontractor's Work from this Subcontract Agreement. In such instance of deleted work, Contractor will provide Subcontractor with a Change Order setting forth the deleted work and the amount to be deducted from the Subcontract price. The amount to be deducted from the Subcontract price shall be the greater of the amount specified for the Work on Subcontractor's bid or schedule of values or the amount Contractor could reasonably pay for the deleted work.

1.6 As used throughout this Agreement, the term "day" shall mean a calendar day unless otherwise specifically stated.

ARTICLE 2

Payments

2.1 **Progress Payments:** Payment shall be made by Contractor to Subcontractor on a monthly basis as the Subcontractor's Work is performed in accordance with the following procedures:

2.1.1 On the 20th day of each month (or three (3) days before the date on which Contractor has agreed to submit its estimate to the Owner, if such date would be earlier in the month) Subcontractor shall submit to Contractor an itemized estimate or invoice of materials incorporated into the Work or suitably stored on the site and Work completed through the date of the estimate. Contractor, Architect and/or Owner shall have the right to receive from Subcontractor such data, vouchers, receipts, invoices or other documents or information as they may require to verify the information contained in Subcontractor's estimate. At Contractor's sole discretion, estimates submitted after the submission date of any month or otherwise not in substantial conformance with the payment procedures set forth herein may be held by the Contractor until the next submission date for processing and until Subcontractor substantially complies with such procedures; however, in no event shall Contractor be required to pay or forward to the Owner any estimate invoice or application for payment that has been submitted by Subcontractor more than sixty (60) days after the Work was performed. If satisfactory to Contractor, the estimate will be incorporated into the Contractor's estimate and forwarded to the Owner and/or Architect for approval. Any variation from this schedule will be noted by Contractor on the individual work orders. Subcontractor acknowledges and agrees that Contractor shall have no obligation to pay Subcontractor for Work performed or materials furnished unless Subcontractor strictly complies with the payment procedures contained herein and that Subcontractor's failure to strictly adhere to such procedures shall give rise to the Contractor's right to withhold payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be made for amounts previously withheld. Subcontractor further acknowledges and agrees that Contractor's acceptance and payment of Subcontractor's previous estimates not in strict compliance with the payment procedures contained herein shall not be deemed as a waiver of such procedures, relieve Subcontractor of its obligation to strictly adhere to such procedures with each and

Page: 3

Author: Date: 9/20/2023 2:33:11 PM

Point out field conditions in 24 hours or it is now "your defect."

Author: Date: 9/20/2023 2:37:11 PM

It does not matter if you sign the contract. If you start work, you are bound by the terms regardless of whether you signed it.

Author: Date: 9/20/2023 2:37:55 PM

If you don't submit everything timely, you get pushed to the next pay cycle (60 days) so make sure you submit all payment documents correctly.

Author: Date: 9/20/2023 2:38:04 PM

If you don't turn in a bill within 60 days you are not entitled to be paid for that work.

every future estimate, or prevent the Contractor from withholding payment until Subcontractor strictly adheres to such payment procedures.

2.1.2 To the extent that the Owner recognizes and accepts the Subcontractor's estimate, Contractor will pay Subcontractor the percent of Subcontractor's estimate approved for payment by the Owner, less retainage of ten percent (10%), provided that it shall not be incumbent on Contractor to make payments in an amount that would not leave a sufficient balance to cover all obligations of Subcontractor for labor, materials, etc. furnished and not paid for or to be furnished by Subcontractor under this Subcontract Agreement. Contractor shall have no obligation to cease withholding retainage from Subcontractor even if Owner decides to reduce or cease withholding retainage from Contractor.

2.1.3 Title for all materials and Work covered by estimates shall pass to the Contractor (or to the Owner, if the arrangements between the Contractor and Owner so provide) when the materials are delivered to the site or when the Subcontractor is paid for such materials and Work, whichever is first. However, this provision shall not be considered as relieving Subcontractor from the sole responsibility for all materials and Work for which payments have been made, the restoration of any damaged work, the cost for replacement or damage of the materials due to theft, or the maintaining of insurance thereon which shall continue until Final Completion, provided that should Contractor elect to submit a claim for any theft or damage to Subcontractor's Work to the applicable Builder's Risk carrier, Subcontractor shall be responsible for the payment of the amount of the deductible. Nothing herein shall be considered as a waiver of the right of Contractor or Owner to require fulfillment of all the terms of the Contract Documents.

2.1.4 Subcontractor expressly agrees that as further consideration for the granting of this Subcontract Agreement to the Subcontractor by Contractor, and as an express **CONDITION PRECEDENT** to Subcontractor's right to receive payment from Contractor for Work performed pursuant to this Subcontract Agreement, Subcontractor and all of its suppliers and sub-subcontractors shall execute and deliver to Contractor with Subcontractor's request for partial payments, a full and complete release of all claims and causes of action the releasing party may have or claim to have against Contractor and Owner through the date of the execution of said release, **SAVE AND EXCEPT** for those claims which the releasing party shall specifically list on said release and describe in a manner sufficient for Contractor to identify such claim with certainty. Subcontractor acknowledges that to the fullest extent permitted by law, actual receipt of payment from the Owner to Contractor for any payment (including, without limitation, progress payments, retention, final payment, and payments for changes and claims) for the Work for which Subcontractor is seeking payment shall be an express **CONDITION PRECEDENT** to Subcontractor's right to receive any such payment. The foregoing pay-if-paid provision within this Subcontract Agreement (hereinafter referred to as the "Pay-If-Paid" provision) is intended to **SHIFT THE RISK OF OWNER'S NON-PAYMENT** from the Contractor to the Subcontractor. Subcontractor hereby knowingly and expressly assumes the risk of the Owner's nonpayment. Subcontractor further acknowledges that to the fullest extent permitted by law, Subcontractor will be paid no more than the amount that Contractor receives from the Owner for Subcontractor's Work and that Subcontractor will be paid no more than the amount, in terms of percentage of Work completed, that Contractor receives from Owner for Subcontractor's Work. In the event the Owner refuses to pay Contractor for any or all portions of Contractor's Payment Application, Subcontractor agrees that Contractor, in its sole discretion, may make a reasonable determination as to how much of the withheld payment is attributable to Subcontractor's Work and that Subcontractor shall be bound by Contractor's decision. Contractor agrees it is not the intent of this Agreement that Subcontractor would be denied payment for work performed in full compliance with the Contract Documents under this Master Agreement or a Change Order because of Owner's refusal to pay Contractor for such work.

2.1.5 Notwithstanding anything to the contrary appearing herein, Subcontractor acknowledges and agrees that regardless of whether or not Contractor receives payment from the Owner and pays Subcontractor that Subcontractor has an obligation to pay its subcontractors and material suppliers the amounts owed by Subcontractor to them for labor and materials furnished in connection with this Project.

2.2 Final payment will be paid within thirty (30) days of the completion of all punch list work by Subcontractor and acceptance of (including, if applicable, the acceptance of the Project into the LEED certification program, or any equivalent thereof, at the level required by the Owner and the Contract Documents) and payment for the entire Prime Contract by the Owner, provided Subcontractor has invoiced for its retainage, but not before Contractor's receipt of executed full and final releases from the Subcontractor and its laborers and suppliers as well as Subcontractor's compliance with the requirements of Section 2.5 regarding lien releases and the delivery of any warranties, guarantees, as-built drawings, test reports, operation and maintenance manuals, etc. required by the Contract Documents. In the event Subcontractor is unable to obtain full and final releases from all of its laborers and suppliers, Contractor may hold all retainage until all time periods for asserting lien and/or bond claims by such laborers and suppliers have fully expired, and upon such expiration of time, Contractor may, in its sole discretion, release the retainage to Subcontractor. In addition to other rights in the Contract Documents, in the event Subcontractor has not fulfilled or Contractor has reasonable belief that Subcontractor will not fulfill, its warranty obligations or any other contractual obligations at the time final payment would otherwise be due to Subcontractor, Contractor may hold all retainage or any other Subcontract funds until Subcontractor's obligation under

Page: 4

Author: Date: 9/20/2023 2:38:13 PM

If you leave your materials on the job site and they are stolen, its your problem.

Author: Date: 9/20/2023 2:38:31 PM

"Paid when/if Paid" Clause

Author: Date: 9/20/2023 2:38:52 PM

Author: Date: 9/20/2023 2:39:00 PM

Author: Date: 9/20/2023 2:39:08 PM

Even if you do not get paid, you have to pay your suppliers.

Author: Date: 9/20/2023 2:39:23 PM

Author: Date: 9/20/2023 2:39:33 PM

"Hold Retainage Forever" Clause

section 9.5 have fully expired. Subcontractor acknowledges that written acceptance of Subcontractor's Work from the Owner shall be an express **CONDITION PRECEDENT** to final payment becoming due to the Subcontractor. Subcontractor acknowledges and agrees that in the event the Pay-if-Paid provision of this Subcontract Agreement is found to be unenforceable for any reason, Contractor agrees that Subcontractor will be paid within a reasonable time following Contractor's receipt of payment from the Owner for the labor and materials provided by Subcontractor. In the event Contractor experiences any problem receiving payment from the Owner, and in the event the Pay-if-Paid provision is unenforceable, Subcontractor agrees to provide Contractor a reasonable length of time to pursue, at Contractor's sole discretion, any dispute resolution procedure provided in the Prime Contract or by law against Owner to enforce Contractor's rights under the Prime Contract and Subcontractor agrees that a period of at least one hundred eighty (180) days following submission of Subcontractor's pay request to Contractor is a reasonable length of time for Subcontractor to wait for payment from Contractor, or fifteen (15) days from Contractor's receipt of payment from the Owner, whichever is sooner, provided Subcontractor has fulfilled all other conditions of payment as set forth herein. Subcontractor further agrees that in the event the Owner fails to pay Contractor, Contractor shall have the sole and exclusive right to develop strategies and exercise such methods it deems appropriate to attempt to recover payment from Owner. Subcontractor agrees that whatever strategy Contractor chooses to employ shall be deemed reasonable for purposes of Chapter 56 of the Texas Business and Commerce Code.

2.3 Notwithstanding anything to the contrary appearing herein, Subcontractor hereby confirms that it is relying primarily on the Owner's credit and ability to pay for Work performed and not on that of Contractor, and Subcontractor agrees that to the fullest extent permitted by law, payment by the Owner to the Contractor for Work performed by Subcontractor shall be an express **CONDITION PRECEDENT** to any payment obligation of Contractor to Subcontractor. Subcontractor acknowledges that Contractor has or will have provided to Subcontractor information relating to Owner's financial integrity and its ability to pay for the Work under the Contract Documents; such information including, but not limited to, information specified in Chapter 56 of the Texas Business and Commerce Code. Subcontractor's receipt of such financial information about Owner shall be deemed Subcontractor's satisfaction that Owner has the financial wherewithal and ability to meet Owner's obligations under the Contract Documents. Subcontractor hereby accepts the risk of Owner's failure to pay for the Work Subcontractor performs under the Contract Documents. Nothing in this Master Agreement shall be construed to diminish Subcontractor's lien rights against Owner's property in the event of non-payment by Owner to Contractor for Subcontractor's satisfactorily completed Work.

2.4 Contractor shall have the express right of set-off for any sums due Subcontractor under this Subcontract Agreement or any other agreement between Contractor and Subcontractor or by operation of law against sums owed or claimed to be owed to Contractor by Subcontractor under this Subcontract Agreement or by virtue of any other agreement or contract by and between Contractor and Subcontractor or by operation of law. Contractor may, without breaching this Agreement, withhold amounts otherwise due under this Subcontract Agreement or any other agreement between Contractor and Subcontractor or by operation of law to cover Contractor's reasonable estimate of any costs or liability Contractor has incurred or may incur, including fees, costs and expenses for attorneys and consultants, for which Subcontractor may be responsible under this Agreement or any other agreement between Contractor and Subcontractor or by operation of law. For purposes of this provision, the phrase "any other agreement between Contractor and Subcontractor or by operation of law" shall be deemed to include any agreement between Subcontractor and Contractor or any joint venture or other entity in which Contractor and/or Subcontractor have an ownership interest for this project or any other project. If Contractor elects, at Contractor's option, to pay sums to cover labor payrolls, freight, express or material bills which Subcontractor has failed to pay promptly when due, then Contractor may deduct the amount of the payment, plus an administrative charge of ten percent (10%) from any amounts due or that may become due to Subcontractor. Contractor reserves the absolute right, but shall be under no obligation, to pay suppliers or laborers of Subcontractor directly and Contractor may deduct same from Subcontractor's Subcontract balance. Contractor maintains the absolute right, in its sole discretion, to issue joint checks at any time made payable to the supplier, laborer, vendor or subcontractor and Subcontractor or to issue checks at any time directly to the supplier, laborer, vendor or subcontractor of Subcontractor, any such payments constituting payment to Subcontractor under this Agreement. Payments otherwise due Subcontractor may be withheld by Contractor on account of defective Work not remedied, claims filed, evidence indicating probability of filing of claims, failure of Subcontractor to make payments to its subcontractors, laborers, vendors or suppliers, a reasonable doubt that the Work can be completed for the balance then unpaid or within the Contract Time, evidence indicating that Subcontractor is not in good standing with the Texas Secretary of State or the state in which Subcontractor is organized, Contractor's reasonable belief that Subcontractor lacks financial viability to perform under this Agreement, or upon Contractor's belief that it has incurred or is likely to incur damages due to Subcontractor's Work or lack of Work. Where the term "Contractor" is used in this Paragraph 2.4, but only for the purposes of this paragraph, it is understood that such reference shall include Contractor as well as any affiliated company.

Page: 5

Author: Date: 9/20/2023 2:39:42 PM

Author: Date: 9/20/2023 2:39:50 PM
Demand Owner's financial information.

Author: Date: 9/20/2023 2:40:08 PM
"Offset for Other Job" clause

Author: Date: 9/20/2023 2:40:16 PM
GC/Owner can pay your sub directly and deduct 10% from you.

Author: Date: 9/20/2023 2:40:23 PM
Joint checks or checks directly to the subs are allowed and the amount will be deducted from your contract amount.

including, but not limited to, parent companies, other entities sharing common ownership with Contractor, joint ventures, and other partnerships in which Contractor has an interest.

2.5 If Subcontractor or any supplier, laborer, vendor, subcontractor or other claimant under Subcontractor should file any claim, lien notice or affidavit or bond claim against the Project, the Owner, Contractor or their respective sureties, Subcontractor shall immediately cause such lien, bond or claim to be released in full. Subcontractor shall provide Contractor an original, recordable release within three (3) business days of demand of Contractor. If Subcontractor should fail to provide such original, recordable release, Contractor shall be authorized to take whatever action Contractor deems necessary to remove such claim including, but not limited to, providing a bond to indemnify against the claim or paying the claim, and Subcontractor shall be liable for all such costs including, but not limited to, bond premiums, interest, attorneys' fees and claims paid. The cost may, at Contractor's option, be deducted from Subcontractor's remaining Subcontract balance, be withheld from any payment due Subcontractor or be payable on demand to Contractor. In the event such actions are necessary, Subcontractor shall reflect such reduction in its accounting, Pay Application, claims and/or lien affidavits. Further, Subcontractor hereby grants full authority to both Contractor and Subcontractor's suppliers, laborers, vendors, or subcontractors to communicate freely and fully on matters particular to invoices and/or outstanding balances on all open accounts of such suppliers, laborers, vendors and subcontractors relating to the Project.

2.6 Subcontractor agrees to pay its workmen not less than the scale of wages prescribed in the Contract Documents, or not less than the scale prescribed by law in case the Contract Documents provide no such scale, and Subcontractor agrees to make payments at the times prescribed by the Contract Documents or by law. Should Subcontractor fail to observe this material covenant Contractor shall have the option to either pay the current amounts and charge such amount against the Subcontract balance or proceed with termination pursuant to Article 7 of this Subcontract Agreement.

2.7 Subcontractor agrees that if any governmental agency for whom Work is to be performed or if Contractor requires certified payrolls, Subcontractor shall provide completed certified payroll reports acceptable to Contractor on a monthly basis. If Subcontractor fails to provide the required certified reports, Contractor may, in its sole and absolute discretion, assess a daily fine until such acceptable certified reports are provided.

2.8 Subcontractor shall not assign or transfer this Subcontract or any part or interest herein including, but not limited to, the right to the proceeds therefrom without express written consent from Contractor, such consent to be granted or withheld in Contractor's sole discretion. Subcontractor and Contractor agree that in any instance in which Contractor may agree to any assignment of the proceeds of this Agreement, even if erroneous or inadvertent, Contractor shall in no manner be liable to any assignee of Subcontractor in any amount in excess of net sums owing Subcontractor hereunder, after deducting any amounts for which Subcontractor may be obligated or indebted to Contractor, including, but not limited to, claims received by Contractor from Subcontractor's subcontractors, laborers, suppliers or employees. Further, in such instance of assignment, Subcontractor waives any claims against Contractor resulting from Contractor's continued payment to the assignees of Subcontractor, notwithstanding any notice of termination of such assignment. By making an assignment of the proceeds of the Subcontract, Subcontractor agrees to assume full liability for conveyance to assignees of any payments mistakenly, inadvertently or otherwise made or addressed to Subcontractor and Subcontractor agrees to indemnify, defend, and hold harmless Contractor from any claim or cause of action of any assignee related to this Subcontract.

ARTICLE 3

Obligations of Subcontractor; Releases and Affidavits of Payment

3.1 Subcontractor Obligations. The Subcontract price includes, and Subcontractor shall pay for, all labor, materials, tools, equipment, supplies, state, federal, local and all other applicable taxes; transportation; storage facilities; offices; telephones; shop drawings; competent supervision; temporary facilities and all other things necessary for performance of the Work covered by this Subcontract Agreement. Subcontractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of Subcontractor's Work.

3.2 Subcontractor agrees and covenants that all monies received by him for performance of this Subcontract Agreement shall first be used for, and that such sums constitute trust funds for, the payment of all labor and materials used in the Work. Subcontractor shall ensure that all of its subcontractors, laborers, suppliers and employees are at all times timely paid all amounts due in connection with the Work. Subcontractor acknowledges and agrees that any failure to make timely payments to its subcontractors, laborers, materialmen and suppliers shall constitute a material breach of this Agreement. Contractor shall have the absolute right to withhold any payments due Subcontractor until Subcontractor submits evidence satisfactory to Contractor that all amounts owed in connection with the performance of this Subcontract have been fully paid. If Subcontractor does not: (a) supply evidence to the satisfaction of

Page: 6

Author: Date: 9/20/2023 2:40:45 PM

If your sub or suppliers file a lien, you must file a bond or get a release within 3 days.

Author: Date: 9/20/2023 2:40:51 PM

Certified payroll - you might have to do this.

Author: Date: 9/20/2023 2:40:58 PM

"Anti Assignment" Clause:

You cannot sub out work without approval from GC/Owner.

Author: Date: 9/20/2023 2:41:13 PM

Get all required permits for your work.

Author: Date: 9/20/2023 2:41:24 PM

Explanation of trust funds.

Contractor that the monies owing to the claimant have been paid, or (b) post a bond indemnifying Owner, Contractor and the premises from such claim or lien, then Contractor shall have a right to retain out of any payments due or to become due to Subcontractor a reasonable amount to protect Contractor from any and all loss, damage or expense, including attorneys' fees, arising out of or relating to any such claim or lien, until such claim or lien has been satisfied by the Subcontractor.

3.3 As a condition precedent to the payment of any Pay Application, Contractor may require Subcontractor to (i) produce a sworn affidavit listing all sub-subcontractors, materialmen and suppliers that have furnished labor, material or subcontracted work to Subcontractor on this Project, along with the amount of each subcontract, purchase order or other contract; (ii) produce waivers of mechanics lien rights (and/or bond claim rights) by Subcontractor and by all persons supplying labor or materials or equipment to Subcontractor on the job through the date of the Pay Application, whether or not they have been paid in full or have served a notice of non-payment in accordance with the Texas Property Code; provided that all lien waivers shall substantially comply with Subchapter L of Chapter 53, of the Texas Property Code regarding waivers and releases of lien or payment bond claims (hereinafter, the "Chapter 53 Release Forms" attached hereto as Exhibit A and incorporated for reference; (iii) produce all additional documents that Contractor, Owner, or Owner's lender may require as a condition to receipt of payment, and/or (iv) provide such other evidence as Contractor may require that charges for labor and material have been paid. Further, Subcontractor agrees to comply with the obligations set forth in Article 4 regarding releases of liens. Subcontractor hereby consents to Contractor contacting Subcontractor's suppliers and subcontractors (at any tier) to determine the current status or indebtedness or other financial information concerning Subcontractor.

3.4 Subcontractor shall neither purchase materials nor incur other debts in Contractor's name without Contractor's prior written authorization.

3.5 Payment to Subcontractor is specifically agreed not to constitute or imply acceptance by Contractor or Owner of any portion of Subcontractor's Work that fails to comply with the Contract Documents or is in any way unacceptable to Owner or Contractor.

3.6 Contractor may withhold amounts otherwise due under this Subcontract Agreement or any other agreement between the parties to cover estimates of costs of liability Contractor has incurred or may incur for which Subcontractor may be wholly or partially responsible under this Subcontract Agreement or any other agreement between the parties. Contractor hereby reserves the right to settle, in its sole and absolute discretion, any and all claims with the Owner, Architect, or other Subcontractor arising out of Subcontractor's Work. If there are not sufficient amounts due Subcontractor under this Subcontract to cover all expenses related to the settlement of claims, Subcontractor shall pay Contractor for such expenses immediately upon demand.

3.7 Subcontractor shall deliver directly to Contractor copies of shop drawings, cuts, samples, material lists, and other submissions, including mock-ups and temporary structures required by Contractor or the Contract Documents within sufficient time so as not to delay performance of the Project and within sufficient time for Contractor to submit the same within the time stated in the Contract Documents. Contractor's review or approval of any shop drawings, cuts, samples, material lists and other submissions, including mock-ups or temporary structures, shall not to any extent, under any circumstances, alter the requirements of the Contract Documents for quality, quantity, finish, dimension, design or configuration or constitute acceptance by Contractor of any method, material or equipment not ultimately acceptable to Owner or relieve Subcontractor from responsibility for errors of any sort or from the necessity of furnishing any work required by the Contract Documents. Should Subcontractor fail to submit copies of shop drawings, cuts, samples, material lists, and other submissions required by Contractor, and including any requests for information directly to Contractor using the correct software mechanism (further addressed in Paragraph 15.10 hereinafter), Subcontractor will be subject to a fine in connection with such erroneous submission. Such fine shall be at the discretion of Contractor and may be increased incrementally with each additional erroneous submission.

3.8 **Accounting and Cost Control Records.** The Subcontractor shall be accountable for all materials, equipment, and labor being utilized in connection with the Work and shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management of this Subcontract Agreement; the accounting and control systems shall be satisfactory to Contractor. Additionally, Subcontractor shall obtain, develop and maintain any and all necessary documentation as may be required to achieve Green Measures, if any, prescribed by the Contract Documents. Subcontractor shall retain and preserve all Project documentation for at least ten (10) years after final payment or longer, if required by the Prime Contract or applicable law. Contractor and/or Owner and their auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy Subcontractor's Project redacted documentation, including any drawings, proposals, purchase orders, vouchers, memoranda and other data relating to this Subcontract Agreement or the Project, at any time.

Page: 7

Author: Date: 9/20/2023 2:41:35 PM

Just because they paid you does not mean your work was done correctly.

Author: Date: 9/20/2023 2:41:43 PM

Even though they approve your submittal(s), they are still not approving the work.

Author: Date: 9/20/2023 2:41:51 PM

Retain all your documents, receipts, invoices, etc. for 10 years.

3.9 Layout. Subcontractor shall be responsible for performing their own layout on the Project. Subcontractor shall lay out and shall be strictly responsible for the accuracy of its Work and for any loss or damage to other contractors or subcontractors engaged in work on the site of the Project by reason of Subcontractor's failure to set out or perform its Work correctly. Subcontractor shall exercise prudence so that actual final conditions and details shall result in alignment of finish surfaces that are within industry standard tolerances or within those set forth in the Contract Documents, whichever are greater. Should it become necessary that Contractor perform such layout due to Subcontractor's failure to fulfill its obligation hereunder, Subcontractor will be back-charged the cost of such layout, plus a fifteen percent (15%) fee to Contractor.

3.10 Notwithstanding the other remedies which Contractor has under this Subcontract Subcontractor will indemnify, defend and hold Contractor harmless from any and all damages or claims arising out of or relating to Subcontractor's payment, or nonpayment, to its subcontractors or suppliers at any tier, including but not limited to attorney's fees and the costs and expenses of litigation or arbitration.

ARTICLE 4

Changes, Extras and Delays

4.1 Changes. Subcontractor may be ordered in writing by Contractor, without invalidating this Subcontract Agreement, to make changes in the Work which is the subject of this Subcontract Agreement (consisting of additions, deletions, or other provisions) with the Contract Sum and the Contract Time being adjusted. However, in no event shall Subcontractor be entitled to an increase in the Contract Sum or Contract Time greater than such amount or period which the Contractor deems reasonable and appropriately justified under the terms of the Prime Contract. Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to Contractor written copies of any claim or adjustment to the Contract Sum and Contract Time for such revised Work in the manner consistent with the Contract Documents and a written Change Order shall be executed in accordance with the Contract Documents. As an express condition to payment or other relative adjustment, no Change Order shall be valid unless Contractor's designated Project Manager has signed and approved same. Notwithstanding anything contained herein to the contrary, if it is determined that the Contractor is not entitled to additional compensation from the Owner for any revised or changed Work for which Subcontractor claims an adjustment to the Contract Sum or Contract Time is to be due, Contractor shall not be liable to Subcontractor for any adjustment to the Contract Sum or Contract Time for such Work.

4.1.1 If Subcontractor requests a proper written Change Order but there is a dispute as to any part of the change, including but not limited to, the price of and time to complete such changed Work, Contractor shall be entitled to issue a written directive to Subcontractor to perform such change and Subcontractor shall be obligated to proceed with such change without either party admitting liability for the change or waiving its rights under this Subcontract Agreement. If Subcontractor commences work on such Change Order, such commencement shall be deemed an approval by Subcontractor of Owner's financial wherewithal to pay for such extra Work. It shall be an express **CONDITION PRECEDENT** that Owner pay Contractor for said Work before any payment shall be due Subcontractor for said work and Subcontractor hereby accepts the risk of non-payment as a result of the Owner's refusal to pay. Subcontractor shall file with the Contractor within three (3) business days from the date of commencing performance of said Work, its written itemized estimate for the cost and time needed to perform the alleged extra Work or changes to be made. Contractor agrees to submit Subcontractor's itemized estimate to Owner for payment. If Subcontractor fails to submit the itemized estimate for cost or time associated with the change as required herein, Subcontractor waives all claims associated with the change and agrees to perform the change at no additional cost or time.

4.1.2 Subcontractor expressly agrees to provide simultaneously with its Chapter 53 Release Forms a written, detailed explanation of any and all "unpaid retention, pending modifications and changes, or other items furnished" related to the Work. Failure to provide the required information sufficient to Contractor shall act as a waiver of any undisclosed claim.

4.2 Claims Relating to Owner. Subcontractor agrees to make all claims for which Owner is or may be liable in the manner provided in the Prime Contract or elsewhere in the Contract Documents, whichever manner is stricter. Notice of such claims shall be given by Subcontractor to Contractor prior to the beginning of Subcontractor's Work that is the subject of the claim, and immediately upon Subcontractor's first knowledge of the event giving rise to the claim, which ever shall first occur, otherwise, such claims shall be deemed waived. Contractor may, in its sole discretion, permit Subcontractor to prosecute said claim, in the name of Contractor, for the use and benefit of Subcontractor, in the manner provided in the Contract Documents for like claims by Contractor upon Owner, at Subcontractor's sole cost and expense. Subcontractor agrees that satisfaction, if any, of Subcontractor's claims by Owner shall be Subcontractor's exclusive and sole remedy for such claims.

Page: 8

Author: Date: 9/20/2023 2:41:58 PM

You will hold Owner and Contractor harmless from nonpayment of your subs and suppliers.

Author: Date: 9/20/2023 2:42:06 PM

They can request more work from you even once you have started.

Author: Date: 9/20/2023 2:42:14 PM

You can be ordered to do more work but prior to the commencement of that work, you have to tell them it is extra otherwise you are doing it for free.

Author: Date: 9/20/2023 2:42:22 PM

Find out who that is.

Author: Date: 9/20/2023 2:42:29 PM

If you do not get a change order before you do the work you are out of luck to receive additional payment.

Author: Date: 9/20/2023 2:42:37 PM

If you cannot agree on a price, they can give you a directive that you have to do the work without getting paid.

Author: Date: 9/20/2023 2:42:43 PM

For changes that would cost extra, if you don't ask before you do it, you will not get paid.

Author: Date: 9/20/2023 2:42:50 PM

You have to give notice to claims immediately otherwise you waive them.

4.3 Claims Relating to Contractor. Subcontractor shall give Contractor written notice of all claims not included in Paragraph 4.2 of this Subcontract Agreement within five (5) days of the beginning of the event for which such claim is made; otherwise, such claims shall be deemed waived. All unresolved claims, disputes, and other matters in question between Contractor and Subcontractor not relating to claims included in Paragraph 4.2 of this Subcontract Agreement shall be resolved in the manner provided in Article 14 herein.

4.4 Delays and Time Extensions. If the progress of Subcontractor's Work is substantially delayed due to no fault or responsibility of the Subcontractor, then the time for Subcontractor's Work may be extended by Change Order, but only to the extent an extension is obtained by Contractor from Owner under the Contract Documents. However, if any party assesses a delay claim which is the total or partial responsibility of Subcontractor, Contractor may assess the proportional amount of the delay claim against Subcontractor.

4.4.1 Subcontractor agrees to make any claim for extension of time to Contractor in the same manner as provided in the Prime Contract for like claims of Contractor upon Owner, and in such time as will enable Contractor to present such claims to Owner for recognition. If, however, the Prime Contract is silent with respect to notice provisions, then Subcontractor shall give Contractor written notice of the claim within seven (7) business days of the event giving rise to the delay along with a request for a specific time extension. Any claim for extension of time not properly presented by Subcontractor within the written notice period is waived.

4.4.2 Contractor shall not be liable to Subcontractor for any damages (consequential, actual or otherwise) or additional compensation as a consequence of acceleration or delays caused by Contractor or any other person or event unless Contractor has recovered damages on behalf of Subcontractor from said person, it being understood and agreed by Subcontractor that apart from recovery from said person, Subcontractor's **SOLE AND EXCLUSIVE REMEDY FOR DELAY** shall be an extension of the time for performance of Subcontractor's Work under the guidelines and restrictions set forth herein. Contractor shall have no duty or obligation to pursue any claim for delay damages from any third party on behalf of Subcontractor. Extension of time shall be Subcontractor's sole remedy for delay, inefficiencies or loss of productivity incurred as a result of delay, or as a result of schedule amendments.

4.5 Liquidated Damages. If the Contract Documents, including, but not limited to, the Prime Contract, provide for liquidated or other damages for delay beyond the completion date set forth in the Contract Documents, and such damages are so assessed, then Contractor may assess the same against Subcontractor in proportion to Subcontractor's share in responsibility for such delay, but in no case shall exceed \$100 per day. The decision to assess the proportional liquidated damages against Subcontractor will be made in the sole and absolute discretion of Contractor. Such damages may, at Contractor's option, be deducted from the Subcontract balance, be withheld from payments due Subcontractor, or be paid by Subcontractor to Contractor upon demand.

ARTICLE 5
Payment and Performance Bonds

5.1 Unless otherwise specified in this Subcontract Agreement or elsewhere in the Contract Documents, payment or performance bonds are not required, but Contractor has the right (at any time during the Project) to require such bonds. If such bonds are required, Subcontractor shall furnish payment and performance bonds for the full amount of the Subcontract price, including any and all addendums or extras. Such bond is to be in a form satisfactory to Contractor and by a surety legally authorized to write such bonds in the state where the Project is located. In the event Subcontractor shall fail to properly provide such requested bonds within a reasonable amount of time, Contractor may terminate this Subcontract Agreement and relet the Work to another Subcontractor and all Contractor's costs and expenses incurred thereby, including, but not limited to, costs of delay, administrative costs and costs of the replacement subcontractor over and above Subcontractor's remaining Subcontract balance, shall be paid by Subcontractor.

5.2 In the event bonds are required from Subcontractor, Contractor may require a consent of surety for all progress and final payments to Subcontractor.

ARTICLE 6
Indemnification and Insurance

6.1 Indemnification. To the fullest extent permitted by applicable law, Subcontractor expressly agrees to defend (at Subcontractor's expense and with counsel acceptable to Contractor), indemnify, and save and hold harmless Contractor, and if required by the Prime Contract, the Owner, the Architect/Engineer and each of their officers, directors, shareholders, employees, agents, successors, assigns, subcontractors, or suppliers of any of them (collectively, the "Indemnified Party(ies)"), from and against any and all claims, suits, losses, causes of action, damages, liabilities, and expenses of any kind whatsoever, (including without limitation, all expenses of litigation and arbitration, court costs, attorneys' fees and expenses, fees and expenses of attorney's experts and consultants, arbitrator's fees and arbitration

Page: 9

Author: Date: 9/20/2023 2:42:57 PM

If you have any potential claims against them you have to let them know within 5 days of the claim arising or you wont get paid.

Author: Date: 9/20/2023 2:43:04 PM

If there is something on the job that would require you to not meet the promised completion date, you need to let them know within 7 days if not sooner or you waive your request for extra time.

Author: Date: 9/20/2023 2:43:11 PM

They can delay the project as long as they want but you still need to show up and work.

Author: Date: 9/20/2023 2:43:59 PM

Explain liquidated damages

GC/Owner can decide if your responsible for liquidated damages in general. You cannot be forced into paying liquidated damages.

Author: Date: 9/20/2023 2:44:06 PM

They can require you to get a bond at any time.

administrative fees and other costs and expenses of arbitration and/or litigation), arising out of or in connection with, or alleged to arise out of or in connection with, injuries to or the death of any person whomsoever, claims for damages from any third party, the failure to achieve specific Green Measures, including LEED certification, or defects in green products or materials, or any and all damages to property (including the loss of use thereof), regardless of possession or ownership, to the extent such injuries, death or damages arise out of or are in any manner connected with or are alleged to arise out of or be connected with, the Work performed by or for Subcontractor under this Subcontract Agreement, or are caused in whole or in part by reason of the acts or omissions or presence of the person or property of Subcontractor or any of its employees, agents, representatives, subcontractors, or suppliers.

6.1.1 Nothing herein shall be construed to require the Subcontractor to indemnify an Indemnified Party for an indemnified claim caused by or resulting solely from an Indemnified Party's own negligence unless otherwise permitted under Chapter 151 of the Texas Insurance Code. It is agreed that with respect to any legal limitations now or hereafter in effect and affecting the validity and enforceability of the indemnification obligation under this Article 6, such legal limitations are made a part of the indemnification obligation to the minimum extent necessary to bring Article 6 into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

6.1.2 NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, SUBCONTRACTOR SHALL BE SOLELY LIABLE FOR AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS INDEMNIFIED PARTIES AGAINST ANY AND ALL CLAIMS, SUITS, DAMAGES OR LIABILITIES BROUGHT AGAINST ANY INDEMNIFIED PARTY BY OR ON BEHALF OF ANY EMPLOYEE, OR THE ESTATE OF ANY EMPLOYEE, OF SUBCONTRACTOR, ITS AGENT OR ITS SUBCONTRACTOR OF ANY TIER, ALLEGING BODILY INJURY, INCLUDING DEATH, SUSTAINED IN CONNECTION WITH OR ARISING FROM THE PERFORMANCE OF SUBCONTRACTOR'S OBLIGATION UNDER THIS AGREEMENT, REGARDLESS OF FAULT OR NEGLIGENCE BY AN INDEMNIFIED PARTY. IT IS THE EXPRESS INTENT OF EACH PARTY HERETO THAT THE INDEMNITOR SHALL INDEMNIFY ANY INDEMNITEE AGAINST THE CONSEQUENCES OF ANY INDEMNITEE'S OWN NEGLIGENCE, WHETHER SOLE OR JOINT, AND THAT INDEMNITOR COMPLETELY ABSOLVE INDEMNITEES OF ALL LIABILITY PERTAINING TO INJURY OR DEATH OF SUCH CLAIMANT. This indemnification provision is intended to comply with Chapter 151 of the Texas Insurance Code and shall be read as broadly as permitted to satisfy that intent.

6.1.3 Subcontractor's assumption of liability is independent from, and not limited in any manner by, the Subcontractor's insurance coverage or lack thereof. All amounts owed by Subcontractor to Contractor as a result of the liability provisions of this Subcontract Agreement shall be paid to Contractor upon demand. The indemnification obligations under this Subcontract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor under worker's or workman's compensation acts, disability benefit acts or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of Subcontractor or of any third party to whom Subcontractor may sublet a part of the Work. This liability shall be enforceable against Subcontractor whether Contractor's damage, loss or expense is established by judgment, arbitration or by settlement and whether or not Subcontractor participated in such litigation, arbitration or settlement.

6.1.4 Subcontractor shall also hold and save Contractor harmless from any liability including costs and expenses, and reasonable attorneys' fees, for an account of any patented invention, article or appliance manufactured or used in performance of this Subcontract, including their use by Owner; and any claims for defective or improper work of Subcontractor, whether or not said claims are asserted by Owner or any third-party.

6.1.5 TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR AND ITS SURETY, IF ANY, COVENANT AND AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS CONTRACTOR OF AND FROM ANY AND ALL CLAIMS, LOSSES, DEMANDS, CAUSES OF ACTION AND THE LIKE, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS WHICH MAY BE ASSERTED AGAINST CONTRACTOR BY OWNER, ITS SUCCESSORS AND ASSIGNS, OR ANY OTHER PARTY OTHER THAN SUBCONTRACTOR, RESULTING FROM, ARISING OUT OF, OR OCCURRING IN CONNECTION WITH THE FAILURE OF SUBCONTRACTOR OR ANY SUBCONTRACTOR OR SUPPLIER OF SUBCONTRACTOR TO PERFORM ALL WORK REQUIRED WITHIN THE SCOPE OF THIS SUBCONTRACT IN STRICT ACCORDANCE WITH THE CONTRACT DOCUMENTS.

6.1.6 The indemnities agreed to by Subcontractor herein expressly include all costs of litigation, attorneys' fees, settlement costs and expenses in connection with the litigation or arbitration, without reimbursement from Contractor, whether or not the claims made for loss, injury, damage or property damage are valid or groundless, and regardless of whether the defense of Contractor is maintained by Contractor or assumed by Subcontractor. Contractor, in its sole discretion and at its sole option, may defend

Page: 10

Author: Date: 9/20/2023 2:44:32 PM

Anything you mess up you will be responsible for.

Author: Date: 9/20/2023 2:44:39 PM

You will step up and defend the Owner or GC in any lawsuits.

Author: Date: 9/20/2023 2:44:46 PM

If you do not perform your work in accordance with the contract you are responsible and so are your subs and suppliers.

any or all of the indemnified claims or tender to Subcontractor the defense of any or all of the indemnified claims. If Contractor elects to tender defense to Subcontractor, Subcontractor shall be bound and obligated to assume the defense of Contractor in the indemnified claims, including the settlement negotiations.

6.1.8.1 It is understood and agreed by Subcontractor that if Contractor tenders the defense of an indemnified claim to Subcontractor and Subcontractor fails or neglects to assume the defense thereof, Contractor may compromise and settle or defend any such suit or action, and Subcontractor shall be bound and obligated to reimburse Contractor for the amount expended by it in settling or compromising any such claim, or in the amount expended by Contractor in paying any judgment rendered therein, together with all reasonable attorneys' fees and cost of litigation incurred by Contractor by reason of its defense, settlement or compromise of such indemnified claims.

6.1.8.2 Neither final payment by Contractor nor acceptance of the Work performed by Subcontractor shall constitute a waiver of the foregoing indemnities and notwithstanding any other provision contained in this Subcontract Agreement, the provisions of this Article 6 shall survive the termination of this Subcontract Agreement for any reason whatsoever.

6.2 **Insurance.** Prior to starting the Subcontract Work, Subcontractor shall procure and maintain in force: (1) statutory Worker's Compensation Insurance for all of Subcontractor's employees at the Project site, (2) Employers Liability Insurance with \$1,000,000 coverage (each section), (3) Commercial General Liability Insurance (including XCU coverage by subcontractors involved in utility work, excavation, mechanical, electrical and/or plumbing work), (4) Automobile Liability Insurance, (5) Excess Liability (Umbrella) Coverage of \$5,000,000 and (6) such other insurance, to the extent required by the Contract Documents for the Subcontract Work. Subcontractor is prohibited from using any forms that vary from the requirements under ISO Form No. CG 00 01 12 04, or its substantial equivalent, and Subcontractor shall notify Contractor immediately in the event its carrier changes the exclusion pertaining to "Employer's Liability" or the "employee injury exclusion" from anything other than that found under ISO Form No. CG 00 01 12 04. Subcontractor shall immediately rectify any inferior coverage so that such coverage meets the stated requirements. The failure of Subcontractor to immediately remedy the inferior coverage and provide Contractor with a copy of the whole insurance policy as evidence that Subcontractor possesses the requisite coverage shall be a material breach of this Agreement.

Unless otherwise provided in this Agreement by Exhibit, the Subcontractor's Commercial General and Automobile Liability Insurance, as required by this provision shall be written for not less than limits of liability as follows:

(i)	Commercial General Liability	Each Occurrence
	\$1,000,000	General Aggregate (per project)
	\$2,000,000	Products/Completed Operations Aggregate
	\$2,000,000	Personal and Advertising Injury
	\$1,000,000	Contractual Liability
	\$1,000,000	Independent Contractor Liability
	\$1,000,000	Premises Damage Legal Liability
	\$100,000	
(ii)	Comprehensive Automobile Liability	Combined Single Limit
	\$1,000,000	
(iii)	Excess Liability (Umbrella)	
	\$5,000,000	

Any such amount required and listed above shall not act as a cap on the amount actually carried by Subcontractor. Should Subcontractor carry in excess of the required amount, the additional insured shall have access to the full limits available to Subcontractor.

Subcontractor's coverage shall include contractual liability insurance sufficient to cover its respective indemnity obligations under this Agreement.

6.2.1 The Commercial General Liability Policy shall contain necessary endorsements listing the Owner and Contractor as additional insureds with coverage on a primary basis for the additional insured (not contributory), and the additional insured endorsement must also include products/completed operations coverage. The required Excess Liability coverage shall be provided in addition to Commercial General Liability and Comprehensive Automobile Liability coverage. All policies shall be written through a company duly authorized to transact that class of insurance in the state where the project is located, shall be with insurance companies acceptable to Contractor with an A.M. Best rating of A - VII or better. To the fullest extent permitted by law, Contractor shall be insured by Subcontractor through Subcontractor's insurance carriers with respect to liability arising out of or in connection with Subcontractor's Work for Contractor. To this end, the Commercial General Liability and Business Automobile Liability Policies shall be endorsed to name Contractor and Owner and Owner's agents, as Additional Insureds, to be evidenced on Form No. CG

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20 10 10 01 and CG 20 37 10 01 that provide coverage for both ongoing and completed operations. Both policies shall be endorsed to be primary and non-contributory to any insurance which may be maintained by or on behalf of Contractor. The Business Automobile Policy should be written using symbol 1 or in combination with symbols 8 or 9 to include liability coverage for non-owned and hired automobiles. The Commercial General Liability policy shall be on an "occurrence" basis and shall include "Limits Apply Per Project." Subcontractor shall maintain all insurance coverages required by this Subcontract Agreement, including the additional insured coverage required to be afforded thereunder with regard to Subcontractor's ongoing operations, in force for a period of two (2) years after completion of the Work and Subcontractor's completed operations coverage, including the additional insured coverage required to be afforded thereunder, shall be kept in force for at least ten (10) years after completion of the Work to protect Contractor from claims asserted against Contractor due to alleged defects in Subcontractor's Work which claims may be covered under such completed operations coverage.

6.2.2 All policies providing coverage for Work under this Subcontract Agreement shall contain a waiver of subrogation endorsement in favor of Owner, Contractor and their employees. Subcontractor shall execute a joint agreement to be filed with the Worker's Compensation Commission stating Subcontractor is an independent contractor.

6.2.3 Prior to starting the Subcontract Work, Subcontractor shall deliver to Contractor an original Accord Certificate of Insurance and copies of endorsements acceptable to Contractor which evidences the coverages and endorsements required herein and which lists all exclusionary endorsements referencing the form numbers. The certificate shall state that the coverages afforded under the policies will not be canceled, terminated or materially modified unless at least thirty (30) days prior written notice is given to the Contractor. If Subcontractor subcontracts any portion of the Subcontract Work, Subcontractor shall deliver to Contractor for each of Subcontractor's subcontractors and/or employee leasing/staffing companies, an original Accord Certificate of Insurance which evidences the same coverages, limits and endorsements required herein and Subcontractor shall require each of its subcontractors and/or employee leasing/staffing companies to provide the same indemnifications to Contractor that Subcontractor is providing in this Subcontract Agreement. Upon request from Contractor, Subcontractor shall deliver a certified copy of all policies of insurance, in whole, required herein.

6.2.4 Subcontractor understands that it is prohibited from using any forms that vary from the requirements under ISO Form No. CG 00 01 12 04 and Subcontractor covenants and agrees that it will notify Contractor immediately in the event of a general liability policy change defining an "insured contract" any way other than as found under ISO Form Number CG 00 01 12 04. Subcontractor shall immediately rectify any inferior coverage so that such coverage meets the stated requirements. The failure of Subcontractor to immediately remedy the inferior coverage and provide Contractor with evidence that Subcontractor possesses the requisite coverage shall be a material breach of this Agreement.

6.2.5 Subcontractor is also prohibited from using the following forms or endorsements: Contractual Liability Limitation CG 21 39; Amendment of Insured Contract Definition CG 24 28; Limitation of Coverage to Designated Premises or Project, CG 21 44; Exclusion-Damage to Work Performed by Subcontractors On Your Behalf, CG 22 94 or CG 22 95; any construction defect completed operations exclusion; any endorsement modifying or deleting the exception to the employer's liability exclusion; any endorsement modifying or deleting explosion, collapse or underground coverage; any habitational or residential exclusion; any "insured vs. insured" exclusion; any punitive, exemplary or multiplied damages exclusion; and any subsidence exclusion. Subcontractor shall immediately rectify any inferior coverage so that such coverage meets the stated requirements. The failure of Subcontractor to immediately remedy the inferior coverage and provide Contractor with evidence that Subcontractor possesses the requisite coverage shall be a material breach of this Agreement.

6.2.6 Professional Errors & Omissions Insurance. In the event any of Subcontractor's Work entails the design of any portion of the Work, Subcontractor shall, in addition to the other insurance provided above, obtain and maintain during the course of the Project, professional errors and omissions insurance in the amount of not less than \$2,000,000 or such other limits as may be required by Contractor or Owner. If this is claims made coverage, the retroactive date shall be before or on the date of the current contract and coverage shall be carried for two years following the completion of the Project.

6.2.7 The insurance provisions in this Agreement, including, but not limited to, any additional insured provisions are intended to comply with Chapter 151 of the Texas Insurance Code and shall be read as broadly as permitted to satisfy that intent. It is agreed that with respect to any legal limitations now or hereafter in effect and affecting the validity and enforceability of the additional insured obligation under this Article 6, such legal limitations are made a part of the additional insured obligation to the minimum extent necessary to bring Article 6 into conformity with the requirements of such limitations, and as so modified, the naming of additional insured obligation shall continue in full force and effect.

6.3 Builders Risk Insurance. Contractor may or may not carry Builder's Risk Insurance. Subcontractor acknowledges that the decision to carry such insurance is solely Contractor's and that

Contractor is NOT obligated to carry such insurance for the benefit of Subcontractor. Subcontractor agrees that it will assume the responsibility to determine whether Builder's Risk Insurance is in force. Upon written request of Subcontractor, Contractor shall provide Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the Project and procured by Contractor or Owner. If Owner or Contractor has purchased Builder's Risk Insurance and Subcontractor receives any payment pursuant to a claim made under such policy, then Subcontractor shall pay the same percentage of the deductible that its share of the payment received bears to the total payment made. If Owner or Contractor has not purchased Builder's Risk Insurance for the full insurable value of Subcontractor's Work less a reasonable deductible, then Subcontractor may procure such insurance as will protect the interest of Subcontractor in the Work, at Subcontractor's expense. If not covered under the Builder's Risk Policy of insurance or any other property or equipment insurance required by the Contract Documents, Subcontractor shall procure and maintain, at Subcontractor's own expense, property and equipment insurance for the portions of Subcontractor's Work which have not been accepted.

6.4 Waiver of Subrogation. Subcontractor waives all rights against Contractor, and any of Contractor's agents and employees, Owner, the Architect, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk or any other property or equipment insurance obtained by Subcontractor. The policy of insurance obtained by Subcontractor shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to Contractor, and its agents and employees, the Owner, the Architect, separate contractors, and all other subcontractors, even though such parties would otherwise have a duty of indemnification, contractual or otherwise, and/or did not pay the insurance premium directly or indirectly.

ARTICLE 7

7.1 Scheduling, Time of Performance, Default and Contractor's Remedies

TIME IS OF THE ESSENCE IN THIS SUBCONTRACT AGREEMENT.

7.2 Schedule. Subcontractor shall perform the Work in accordance with the schedule

referenced in the work order or otherwise promulgated by Owner or Contractor. Subcontractor shall cooperate with Contractor in scheduling and performing Subcontractor's Work to avoid conflicts or interference with the work of other trades and to ensure an efficient Project. Subcontractor shall be liable to Contractor for failure to adhere to Contractor's schedule, including amendments, even if such schedule differs from schedules set forth in the Contract Documents or the time of completion called for in the Contract Documents. In agreeing to perform the Work in accordance herewith, Subcontractor has taken into account and made allowance for delays which should be reasonably anticipated or foreseeable, including, but not limited to, delays caused by rain and other inclement weather conditions. If requested by Contractor, Subcontractor shall submit detailed schedules for the performance of this Work in a form acceptable to Contractor, which shall comply with all scheduling requirements of the Contract Documents. Contractor may, from time to time, in its sole discretion, make modifications and revisions to the schedules.

7.2.1 Contractor's Right to Modify Project Schedule and Sequence. Subcontractor acknowledges that as construction progresses it may be necessary for Contractor to change the sequential order and duration of the various activities, including those contemplated by this Subcontract Agreement, to account for unanticipated delays, occurrences and other factors which act to alter Contractor's original schedule. Contractor may require Subcontractor, at no additional cost to Contractor and in Contractor's sole discretion, to prosecute Subcontractor's Work in such sequence as the progress of the other subcontractors and the project schedule reasonably dictates. It is expressly understood and agreed that the scheduling and sequencing of the Work is an exclusive right of Contractor and that Contractor reserves such right to reschedule and resequence Subcontractor's Work from time to time as the demands of the Project require without any additional cost or expense to be paid to Subcontractor, to the extent the Subcontractor has been provided and accepted in writing the terms of the contractor's current construction schedule as it applies to the Subcontract Work.

7.2.2 Subcontractor shall carry on said Work promptly, efficiently and at a speed that will not cause delay in the progress of Contractor's work or the work of other subcontractors. If, in the opinion of Contractor, reasonably suspects Subcontractor will fall behind in the progress of the Work, Subcontractor may be directed to take such steps as deemed necessary to improve the rate of progress. These steps may include, without limitation, requiring Subcontractor to increase the number of shifts, personnel, overtime operations, days of work, equipment, or any other remedies the Contractor, in its sole discretion, may deem necessary. Subcontractor shall submit to Contractor, for Contractor's approval, a schedule demonstrating how the required rate of progress necessary to meet the schedule will be implemented and monitored without additional cost to Contractor or Owner. Notwithstanding anything within this Subcontract to the contrary, Subcontractor cannot meet approximate completion date provided in the Contractor's contract with Owner. Subsequent to the execution of this Subcontract and after openings have been properly prepared by others, Subcontractor shall be given a reasonable amount of time to measure openings then order and received materials. The Contract time shall then be extended by the length of time required to commence and complete the performance of the Work and no delay damages, fines or penalties shall accrue to Subcontractor.

7.2.3 Contractor's Right to Accelerate/Overtime. Contractor may, in its sole discretion, with reasonable notification accelerate Subcontractor by directing Subcontractor to work overtime and if so instructed, Subcontractor will work such overtime and, provided that Subcontractor is not in default under any of the provisions herein, including, but not limited to, the Subcontractor's duty to perform the Work in strict accordance with the most recent Project schedule, Contractor will pay Subcontractor for the actual proved incremental

Page: 13

Author: Date: 9/20/2023 2:45:06 PM

Talk about schedule and liquidated damages.

Author: Date: 9/20/2023 2:45:14 PM

GC/Owner can change the schedule at any time without any additional funds even if it will cost you more money to do it.

Author: Date: 9/20/2023 2:45:20 PM

If GC/Owner thinks you will fall behind, they will do whatever it takes to make sure you wont, including withholding your money.

portion of such wages paid at rates which have been approved by Contractor, plus taxes imposed by law on the incremental portion of such additional wages, plus worker's compensation, levies and liability insurance on such additional wages when required to be paid by Subcontractor. In no event, however, shall Subcontractor be entitled to any overhead or profit or for inefficiencies, declines in productivity, impact or other special or indirect charges or damages of any kind as a result of any acceleration or other schedule or sequence modifications.

7.3 **Performance and Termination for Default.** For purposes of this Agreement, Subcontractor's failure to perform shall include the failure of its lower tier subcontractors and suppliers to perform. If Subcontractor is, in Contractor's opinion, behind schedule with the Work, Subcontractor shall, at its own expense, work such overtime as Contractor may deem necessary to comply with the schedule and complete the Work. Subcontractor shall pay all extra costs resulting from its lack of diligence or failure to provide needed labor or materials to meet the schedule of Work. In the event Subcontractor is behind schedule, Contractor shall be entitled to withhold any and all payments due or to become due under the Subcontract Agreement until Subcontractor corrects the deficiency and complies with the Project schedule. Should Subcontractor at any time refuse or neglect to supply sufficient skilled workmen or material of proper quality, or refuse to follow the plans, specifications or other Contract Documents, or fail to pay for labor and materials for which it has received payment from the Contractor, fail in any respect to prosecute the Work to be performed, or fail in any other respect to comply with the terms of this Subcontract Agreement, the Contractor shall have the right, immediately upon written notice to Subcontractor to terminate Subcontractor's right to proceed in whole or in part. In such event, notwithstanding anything in this Subcontract Agreement to the contrary, Subcontractor shall not be entitled to any further payments hereunder, whether due or not, and Contractor shall have the right to retain the entire Subcontract balance, earned or not, due or yet to become due, until the completion of the Project. The Contractor may finish Subcontractor's Work by whatever method it may deem expedient and Subcontractor and its surety, if any, shall be liable to Contractor for any cost occasioned thereby. Contractor shall be entitled to deduct all costs as a result of Subcontractor's default from any and all funds withheld from Subcontractor, including, but not limited to, Contractor's general conditions costs, costs of completion, costs of supervision, costs of correction, all acceleration costs, attorneys' fees, architects' fees, inspection or re-inspection charges, and clean-up and disposal costs. In the event the costs of completion exceed the Subcontract balance, the difference shall be immediately paid by Subcontractor to Contractor and Contractor shall have the express right to pursue a prejudgment garnishment action to freeze said funds. In the event the Subcontract balance exceeds the costs of completion, Subcontractor shall be paid the difference. Contractor's administrative costs shall be included in the calculation of the costs of completion. In addition to the foregoing, should Subcontractor schedule a building inspection but fail to timely and properly appear at such scheduled inspection, Subcontractor shall be fined a sum of \$1,000.00 for the first offense, increasing to \$2,000.00 for the second offense, and so on in increments of \$1,000.00 per offense, plus all fines imposed by relevant municipalities and/or regulatory agencies so affected by such failure to show. Such sum shall be deducted from any payment then due Subcontractor.

7.4 **Other Remedies for Default Other than Termination.** Should Subcontractor (a) fail to correct, replace and/or re-execute faulty or defective Work and/or materials furnished under this Subcontract Agreement; (b) fail to complete or diligently proceed with the Work within the time required by Contractor; (c) fail to correct or repair any damage to the Work caused by Subcontractor, or those for whom it is responsible, or by virtue of Subcontractor's failure to protect its Work; (d) refuse or fail to provide sufficient properly skilled workers, adequate supervision or materials; (e) in Contractor's good faith belief, perform in an inadequate manner, damage Contractor, Owner or other subcontractor, or cause Contractor to be unable to perform its contractual obligations; or (f) otherwise be in default of any provision of this Subcontract Agreement or the Contract Documents, then Contractor, upon forty-eight (48) hours prior written notice to Subcontractor, shall have the right to correct, replace or otherwise remedy any such defect, deficiency or delayed performance by any reasonable and expedient means, including taking over or supplementing Subcontractor's Work and materials and employing such additional labor, equipment and materials as may be necessary to cure the default and achieve compliance with the Subcontract Agreement and the Contract Documents. In such event, Contractor may deduct and/or withhold from payments then or thereafter to become due Subcontractor the cost of correcting such deficiencies, plus overhead of fifteen percent (15%) to cover costs not readily ascertainable and not as a penalty. If payments then or thereafter due Subcontractor are not sufficient to cover such amount, Subcontractor and/or its surety, if any, shall promptly pay the difference to Contractor.

7.5 In the event of elimination or reduction of the Work to be performed under this Subcontract Agreement by reason of termination or modification of the Prime Contract or Contract Documents or a change in the Work to be performed thereunder, either in accordance with the terms of the Contract Documents or by default by the Owner, Subcontractor shall not be entitled to recover from Contractor more than its fair and equitable portion, as determined by Contractor, of any sums actually received by Contractor

Page: 14

Author: Date: 9/20/2023 2:45:27 PM
If you are behind schedule they can withhold payment.

Author: Date: 9/20/2023 2:45:34 PM
If you are terminated you could be liable for what it would cost to finish your scope.

Author: Date: 9/20/2023 2:45:42 PM
48 hour notice of default.

for Work completed and material supplied by Subcontractor under this Subcontract Agreement. The rights and claims of Contractor, other subcontractors and third parties shall be taken into consideration in determining Subcontractor's fair and equitable share of the amounts paid by Owner as a result of such termination or modification and Contractor's determination of Subcontractor's fair and equitable share of any such sums shall be final and conclusive.

7.6 Contractor shall have the absolute right to terminate Subcontractor for convenience for any reason and at any time during the course of this Subcontract Agreement with a written notice of termination effective upon receipt by Subcontractor. If there has been a termination of the Prime Contract, Subcontractor shall be paid the amount due for its Work, provided Contractor has received payment for such Work from the Owner and only to the extent of such payment. If the Prime Contract has not been terminated, Subcontractor shall be paid the reasonable value of the Work performed by Subcontractor prior to termination plus reasonable direct close-out costs, but in no event shall Subcontractor be entitled to unabsorbed overhead, anticipatory profit or damages of any kind or nature, direct or indirect, incidental or consequential. Contractor may, in its sole discretion, utilize its right to terminate Subcontractor for convenience, in lieu of compliance with the terms regarding a termination for default.

7.7 Termination (whether for cause or convenience) of Subcontractor shall not be made the basis of any legal action to secure additional compensation or damages, but nothing herein shall affect the right of Contractor to recover damages from Subcontractor for delay or unsatisfactory performance or nonperformance of this Subcontract Agreement. Notwithstanding anything to the contrary appearing herein, under no circumstances shall Contractor ever be liable to Subcontractor for any amount and Contractor shall never be required to pay to Subcontractor any amount in excess of the amount of this Subcontract Agreement.

7.8 In the event of termination of Subcontractor, Contractor may take over any of Subcontractor's outstanding subcontracts and purchase orders and may take possession of all tools, equipment, scaffolding, materials and supplies of Subcontractor which are on the Project site, in transit to, or specially manufactured for said Work for use in the completion of this Subcontract Agreement. The Contractor is given a lien waiver on all such property to secure the performance hereof.

7.9 If Subcontractor should neglect, fail or refuse to perform any portion of its Work which affects the even flow progress of the Project or any work of any emergency nature, Contractor shall have the right, after any form of reasonable notice to Subcontractor, if feasible, to perform such Work without prejudice to any other remedy it may have, and deduct the reasonable costs thereof from the Subcontract balance.

7.10 Subcontractor hereby waives all claims against Contractor for profits, rent on equipment or other damages related to any termination, acceleration or other action which Contractor undertakes pursuant to this Article 7.

7.11 Contractor has the right to remove or bar any employee of Subcontractor or any of its employees, agents, representatives, subcontractors or suppliers from the Project if Contractor has a reasonable objection to such party being present at the Project.

7.12 Bankruptcy Proceedings or Insolvency of Subcontractor. It is recognized that if Subcontractor becomes a debtor in voluntary or involuntary bankruptcy proceedings, makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of its insolvency, such events could seriously impair or frustrate Subcontractor's performance of the Work. Accordingly, it is agreed that should Subcontractor become a debtor in bankruptcy, either voluntarily or involuntarily, Subcontractor shall notify Contractor in writing within twenty-four (24) hours of its filing. Further, it is agreed that upon the occurrence of such events, Contractor shall be entitled to request of Subcontractor or its successors, trustees, or receivers, adequate assurances of future performance in accordance with the terms of this Subcontract Agreement. Failure to comply with such requests within three (3) days of such request, shall entitle Contractor, in addition to any other rights and remedies provided in this Agreement, to immediately invoke the remedies provided in Article 7 and Article 10 of this Subcontract Agreement, and as provided by law. Pending receipt of such adequate assurances of such future performance and actual performance, Contractor may proceed with Subcontractor's Work on a temporary basis and may deduct the cost, plus reasonable overhead and profit, from any amounts due or which may become due to Subcontractor. In this regard, Contractor and Subcontractor agree that delays in performance could result in more damages to Subcontractor than would be sustained if Contractor failed to exercise such remedies. Subcontractor further agrees that in the event that Contractor is required to return, refund, or otherwise make any payments to Owner due to any preference action or similar bankruptcy proceeding, Subcontractor shall be required to promptly return any such funds previously paid to Subcontractor to Contractor. In the event of Subcontractor's bankruptcy, this Agreement shall terminate if Subcontractor rejects this Agreement or if Subcontractor is unable to give adequate assurance that it will perform as provided in this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the Bankruptcy

Page: 15

Author: Date: 9/20/2023 2:45:50 PM
"Termination for Convenience" Clause.

Author: Date: 9/20/2023 2:46:00 PM
If you do not perform the work, they can perform it for you.

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Code. It is understood that the obligations set forth in the preceding sentence are a continuation of the agreement and acceptance of risk set forth in Paragraph 2.1.4 of this Subcontract Agreement.

7.13 Collection of Amounts Owed to Contractor. In the event that Subcontractor owes any amount to Contractor, whether under this Subcontract Agreement or otherwise, Subcontractor agrees to Contractor's employment of whatever collection methods it deems reasonable and expedient, including, but not limited to, garnishment (pre and post judgment), sequestration, attachment or any other legal method. Subcontractor agrees to waive any and all bond requirements associated therewith. Subcontractor agrees to pay to Contractor all costs of collection.

7.14 Conversion of Cause to Convenience. In the event Contractor terminates Subcontractor for any cause under the terms of this Subcontract Agreement and it is later determined by a court of competent jurisdiction, by arbitration or other similar proceeding that such termination for cause was not justified, then such termination for cause shall automatically be converted to a termination for convenience under the terms of this Article.

7.15 Right to Receivership. Should Contractor deem it desirable, Contractor shall have the right, and Subcontractor hereby consents, to the appointment of a receiver by any court with jurisdiction, without bond (or, if local rules require, a bond of nominal amount) to take charge of the Work and all of Subcontractor's equipment, material, tools and other appliances on or near the Project site and associated with the Work at any time when Subcontractor is in default and such default has not been remedied or cured to the satisfaction of Contractor. Contractor may employ such receiver to continue the Work, receive any payments due to Subcontractor hereunder, pay all bills and invoices to Subcontractor's subcontractors, suppliers or employees and materialmen due from Subcontractor, and otherwise perform Subcontractor's obligations hereunder, without discharging or limiting the liability of Subcontractor to Contractor or of any surety on any bond. In such event, Subcontractor shall not be entitled to receive any further payment hereunder until the Work is completed. If the unpaid balance of the Subcontract price shall exceed the expense of finishing the Work, including compensation to the receiver, if any, such excess shall be paid to Subcontractor. If such expense shall exceed such unpaid Subcontract balance, Subcontractor shall pay the difference to Contractor. The expense incurred by Contractor as herein provided, and the damage incurred through Subcontractor's default, shall be certified by Contractor, and as certified, shall control as between the parties and the surety on any bond. The remedies set forth herein shall be cumulative of and not in lieu of any other remedies available to Contractor at law or in equity.

7.16 Remedies Cumulative. No right or remedy of Contractor contained in this Subcontract Agreement is intended to be exclusive of any other right or remedy, but every such right or remedy shall be cumulative and shall be in addition to and not a limitation of any duties, obligations, rights and remedies provided herein or otherwise imposed or available by law.

ARTICLE 3
Compliance with Laws, Permits and Notices

8.1 Subcontractor shall give notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work under this Subcontract Agreement including, but not limited to: The Occupational Safety and Health Act of 1970; Fair Labor Standards Act; building codes; federal, state and local tax laws; local building ordinances; and Workers' Compensation Acts. Subcontractor shall also defend and hold harmless Contractor and Owner from any and all liability, damages, fines, and costs arising out of Subcontractor's failure to comply with all laws, regulations and ordinances applicable to the Work.

8.2 Without limiting the foregoing representations, conditions and covenants, Subcontractor specifically warrants and represents to Contractor that Subcontractor is not at the present time employing on any project and will not in the future employ or knowingly allow any of its subcontractors or suppliers to employ or continue in its employment any individual who is not legally authorized to work in the United States of America, or otherwise commit any violation of the Immigration Reform and Control Act of 1986, the Immigration and Nationality Act or any other federal, state or local statute, rule or regulation relating to the employment of illegal aliens. Subcontractor shall as a condition to its being awarded this Subcontract and being permitted to perform and/or continue performance of the Work under the scope of this Subcontract, use due diligence to verify the work status of any and all individuals seeking employment with or by such Subcontractor, and shall maintain all records, documents and other means to verify that such individual is a citizen or national of the United States of America, an alien lawfully admitted for permanent residence, or an alien who is authorized under the Immigration Reform and Control Act of 1986 or by the Attorney General of the United States of America to be hired, recruited or referred for such employment and shall maintain such records for the period of time required by law. Subcontractor shall defend, indemnify and hold harmless Contractor of and from any claims, demands, losses, damages or expenses that Contractor may suffer or incur as a result of the failure on the part of Subcontractor to adhere to and comply with all the requirements

of this provision, including any fines, penalties or other sanctions that may be levied or assessed against Contractor, its agents, servants and employees by any governmental or regulatory agency or bureau.

8.3 Insofar as the Contractor has any obligation for affirmative action or otherwise under applicable Equal Employment Opportunity Rules and Regulations and various other state and federal non-discrimination laws as they apply to the various forms of non-discrimination in employment, and as they apply to the employment of handicapped persons, as well as that of Vietnam Era Veterans, then this obligation shall also extend to the employment practices of the Subcontractor.

ARTICLE 9

Protection of Work, Safety and Warranties

9.1 **Protection of Work.** Subcontractor shall effectively secure and protect its materials and Work at its sole expense and shall be solely responsible for the protection and safety of its materials, equipment and Work, whether or not installed and whether or not accepted by the Contractor and/or the Owner. Subcontractor shall repair and/or replace, at the Contractor's option and at Subcontractor's sole expense, any and all Work which is stolen, damaged or otherwise fails to comply with the Contract Documents, regardless of the cause of such theft or damage, notwithstanding any contrary provision of this Subcontract Agreement and regardless of whether or not such damage or theft is covered by Contractor's Builder's Risk Insurance or other insurance.

9.2 **Protection of Other's Work.** In carrying out its Work, Subcontractor shall take any and all necessary precautions to properly protect the finished work of other trades and the Owner from damages caused by its operations. Subcontractor shall promptly reimburse Contractor and/or other subcontractors for damages caused to their materials and work caused by Subcontractor or anyone under its control or authority. Should Subcontractor fail to promptly pay for such damages, Contractor is hereby authorized to withhold an amount to cover such damages from any payments that become due hereunder or any other amounts Contractor may owe Subcontractor. If Subcontractor deems that the surface of work to which his Work is to be applied or affixed is unsatisfactory or unsuitable, three (3) business days written notification of said condition shall be given to Contractor before proceeding or taking on remedial action, otherwise Subcontractor shall be fully and solely responsible and liable for any and all expense, loss, delay, or damages resulting from said condition and Contractor shall be relieved of all liability in connection therewith.

9.3 **Hazardous Materials.** In accordance with the Hazardous and Toxic Substance Act, Subcontractor must submit to Contractor two (2) copies of Subcontractor's Hazard Communications Program and Material Safety Data Sheets for any hazardous chemicals Subcontractor may be using on the Project. Subcontractor is responsible for complying with all OSHA requirements included in the Hazardous and Toxic Substance Act, including, but not limited to, providing information to any workman on the Project who may request such information. Subcontractor is responsible for verifying that all information included within the Hazard Communications Program and Material Safety Data Sheets is current and in compliance with OSHA at all times.

9.4 **Safety.** Subcontractor acknowledges that safety is of the utmost importance on this Project and agrees to comply with rules imposed under the Prime Contract, including but not limited to drug screening of workers and specialized safety training. Subcontractor shall take all necessary precautions for the safety of all persons on the Project and shall comply with all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injuries to persons or damage to property on or about or adjacent to the Project. Contractor and Subcontractor agree that Contractor does not owe a duty to ensure that Subcontractor performs its Work in a safe manner. Subcontractor acknowledges and agrees that Contractor does not retain any actual or constructive control over the means, manner or method in which the Subcontractor or its employees or laborers perform their Work. Subcontractor agrees that it, and not Contractor, shall be responsible for constant supervision and monitoring of all its employees and laborers. Further, Contractor and Subcontractor agree that Contractor shall not have responsibility for the direction of Subcontractor's safety or the safety of those under the Subcontractor's control. Subcontractor agrees to maintain a familiarity with conditions existing over the entire premises on which the Work is located so that it will be aware of any dangerous conditions, whether hidden or obvious. Issues specifically requiring Subcontractor's constant supervision and immediate correction in the case of unsafe conditions include, but are not limited to, cleaning of the Project site; wearing of hard hats and protective eyewear; keeping railings, barricades and covers in the proper place and in good repair; wearing all necessary protective equipment; keeping scaffolding and ladders in good repair and in proper use; using power tools properly grounded and in good repair, including electrical extension cords; and providing proper warning to its employees, subcontractors and suppliers of any unsafe conditions on the Property.

9.5 **Warranties.** 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, but in no event shall such warranty be for any term less than twelve (12) months from the Date of Substantial Completion.

Page: 17

Author: Date: 9/20/2023 2:46:05 PM

You have to protect your materials and you also have to protect your work when your done. You are responsible for stuff not installed and installed.

Author: Date: 9/20/2023 2:46:12 PM

Lasts at least 12 months from substantial completion of the project, not the completion date.

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Subcontractor warrants that its labor and materials will not be defective, will comply with the Contract Documents, including any requirements that the materials meet the "Green Measures" for LEED certification, will be new (unless the Contract Documents specifically state otherwise), and that the Work will be suitable for its intended use and will be constructed and installed in a good and workmanlike manner in accordance with the best construction practices. Subcontractor's warranty shall apply to all Work and material performed by Subcontractor, unless the Contract Documents contain a stricter standard in which case the stricter standard shall control. Upon demand of Contractor or Owner, Subcontractor shall immediately honor all warranties and correct any defective Work or materials. Subcontractor further represents and warrants that Subcontractor has not been designated as an Extra-Hazardous Employer by the Texas Workers Compensation Commission and agrees to immediately notify Contractor in writing if Subcontractor becomes so designated during the period of time that this Agreement is in effect. At Contractor's option, this Agreement may be terminated in accordance with Article 7.3 upon Subcontractor being designated as an Extra-Hazardous Employer. In the event this Subcontract Agreement is terminated for any reason, Subcontractor's warranties, guarantees and indemnities shall survive such termination and remain in full force and effect for the period of time prescribed in the Contract Documents.

ARTICLE 10
Defective Work

10.1 Subcontractor shall promptly amend, remedy, and make good any defective or non-complying materials and/or workmanship to the entire approval and acceptance of Contractor and Owner and their representatives. Should Subcontractor refuse or neglect to proceed at once with the correction of rejected or defective materials and/or workmanship after receiving notice to do so, it is agreed that Contractor may have the defects remedied or changes made at the sole expense of Subcontractor. Alternatively, should Contractor so elect, Contractor is hereby authorized to withhold any amount which Contractor, in its sole discretion, deems necessary to cover such costs from the Subcontract balance or from any payment due or to become due to Subcontractor. In the alternative, Subcontractor shall pay Contractor the costs of repairs upon demand of Contractor. The remedies described above shall not be exclusive, but shall be in addition to all others provided by this Subcontract Agreement and by law.

ARTICLE 11
Clean-up and Environmental Compliance

11.1 Subcontractor shall broom clean up and remove from the site, on a daily basis or as and when directed by Contractor, all rubbish and debris resulting from its Work. Also, Subcontractor shall clean up to the satisfaction of the Contractor, the Owner, and their respective representatives, all dirt, grease, marks, and the like on the walls, ceilings, floors, fixtures, and all other surfaces on the Project deposited or placed thereon as a result of the execution of this Subcontract Agreement. If Subcontractor refuses or fails to perform such cleaning as and when directed by Contractor, the Contractor shall have the right and power to proceed with said cleaning and Subcontractor will, upon demand, pay to Contractor the actual cost of said labor, plus a reasonable percentage of such costs to cover supervision, insurance, overhead, and other costs. Should Contractor so elect, Contractor is hereby authorized, in the alternative, to withhold an amount to cover such cost from any payments that become due hereunder or any other amounts Contractor may owe Subcontractor.

11.2 **Environmental Control and Compliance.** Subcontractor acknowledges that the performance of the Work will result in an indeterminate amount of Waste, as defined hereafter, and Debris, as defined in Paragraph 11.3. For purposes of this Agreement, "Waste" shall be defined as commercial products or chemicals which are off-specifications, outdated, unused or banded, including the containers of same; liquids and sludge from septic tanks and food service grease traps; chemical-containing equipment removed from service, e.g. filters and acetylene tanks; and includes "Hazardous Substances," which shall mean all pollutants, contaminants, chemicals, and any other carcinogenic, ignitable, corrosive, reactive, toxic, or otherwise hazardous substances subject to regulation, control or remediation under applicable environmental laws. Subcontractor agrees to retrieve, pick up and remove and place at a location designated by Contractor all such Waste each day during the course of the Work and on final completion of its Work. This environmental clean-up is in addition to the clean-up obligations detailed above and shall be subject to the same remedies. Notwithstanding anything herein to the contrary, Subcontractor shall retain title to and full legal responsibility for any substances brought to the Project location by or for the benefit of Subcontractor and to all Waste generated in the performance of the Work. Subcontractor shall keep all Waste generated from the performance of the Work separate from all other Waste generated at the job site. Subcontractor shall, in compliance with all applicable laws, arrange directly (i) with third party transporter(s) for transportation, from the Project location, of all the Waste generated in the performance of the Work, and (ii) with third party disposal facility(ies) for disposal of all Waste generated in the performance of the Work. Contractor may, at its option and upon written

notice to Subcontractor, contract with a transporter(s) and/or disposal facility(ies) or arrange with Owner for removal of Waste at such intervals, as Contractor shall determine necessary, whereupon Subcontractor shall deposit all Waste as directed by Contractor.

11.3 For purposes of this Agreement, "Debris" shall be defined as all left-over construction material, scrap, and rubbish that is not Waste as defined above. Subcontractor shall deposit its Debris in dumpsters or other receptacles designated by Contractor and which will be removed at appropriate intervals.

11.4 Should the Work include "demolition" or "renovation", as those terms are defined in regulations promulgated by the State of Texas, at TAC Title 25, Part 1 Chapter 295 Subchapter C Section 295.32 *et seq.*, or the U.S. Environmental Protection Agency, at 40 CFR 61.141 *et seq.*, Subcontractor shall be deemed for all purposes the "owner" and "operator" of the site of the Work and shall satisfy all legal obligations, including without limitation, advance notice requirement applicable to such demolition or renovation, and shall demonstrate to Contractor that such obligations are, and will be satisfied.

ARTICLE 12

Use of Contractor's Equipment and Materials

12.1 The Subcontractor shall be responsible for unloading and hoisting all its materials, supplies, tools, and equipment in order to ensure timely completion of the Work, and in such manner as to not impede the Work or progress of any other subcontractor.

12.2 The Subcontractor, its agents, employees, subcontractors, or suppliers shall not use Contractor's equipment without the express written permission from Contractor. If Subcontractor makes use of Contractor's equipment and/or materials, it shall pay for such services unless otherwise provided in this Subcontract Agreement.

ARTICLE 13

Restrictions on Assignments, Supervision and Cooperation with Others

13.1 It is expressly understood and agreed that Subcontractor's responsibilities and obligations under this Subcontract Agreement are non-delegable personal services, and that the Subcontractor shall not assign responsibility for performance nor subcontract this Subcontract Agreement or any part thereof without first obtaining written consent of Contractor.

13.2 Subcontractor may not assign or attempt to assign any funds accrued or to be accrued under this Subcontract Agreement without first obtaining the written consent of Contractor and no such assignment shall be binding on Contractor unless or until accepted in writing by Contractor. Contractor shall not be asked to execute or be obligated in any manner to honor any joint check agreement, factoring agreement, assignment of receivables or similar agreements. Subcontractor shall indemnify and hold Contractor harmless from any and all claims arising out of any such agreements. Contractor has the right, but not the obligation, to honor a joint check agreement according to the terms set forth by Contractor. Subcontractor agrees that it has sufficient financial resources to perform its obligations under this Subcontract Agreement and that Contractor's entering into joint check agreements is not necessary in order for Subcontractor to obtain materials from its suppliers.

ARTICLE 14

Disputes, Arbitration and Litigation

14.1 Disputes. Should any dispute or controversy arise between Contractor and Subcontractor concerning any matter involving or arising out of this Subcontract Agreement, the following procedures shall apply:

14.1.1 Such dispute or controversy shall be submitted by one party to the other in writing.

14.1.2 The parties shall make a good faith attempt to settle such dispute.

14.1.3 If such dispute cannot be settled between the parties, then the written orders or direction of Contractor shall be followed by Subcontractor without waiver of Subcontractor's claims, disputes, or demands, because of following Contractor's written orders.

14.2 Arbitration. Any disputes or controversies not resolved or settled by the parties hereto shall be submitted to arbitration. Arbitration shall be conducted in accordance with the Construction Industry Dispute Resolution Procedures, as are in effect at the date of the filing, as set forth by the American Arbitration Association, unless otherwise agreed by the parties, and judgment upon the award by the Arbitrator(s) may be entered by any court having jurisdiction. However, claims relating to the Owner shall be resolved in accordance with the dispute resolution procedures set forth in the Prime Contract. The locale of any arbitration shall be Dallas County, Texas, unless Contractor agrees otherwise. Any locale designated by Contractor shall be binding. The number of arbitrators chosen by Contractor shall be binding.

14.3 If, for any reason, it is determined that the dispute is not subject to arbitration or in the event the dispute involves the Owner and the Prime Contract provides that the dispute is subject to litigation, the

Page: 19

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Load and unload your own materials and stuff.

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Explain what arbitration is.

venue of such suit is hereby agreed to be any court of competent jurisdiction in Dallas County, Texas. In the event of litigation, **DUE TO THE SPECIALIZED NATURE OF CONSTRUCTION LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY.** The law applicable to any arbitration or litigation concerning or relating to this Subcontract Agreement shall be the laws of the State of Texas.

14.4 Contractor shall have the absolute right to consolidate the arbitration with Subcontractor with any other arbitration relating to or arising out of the subject matter of the arbitration with the Subcontractor. Contractor, at its sole discretion, 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.

14.4.1 In the event there is a dispute pending or a dispute arises between Contractor and Owner, Subcontractor agrees to voluntarily abate its claim or lawsuit until Contractor's dispute with Owner is resolved.

14.5 If Contractor shall be required to employ an attorney to enforce any of the provisions of this Subcontract Agreement, or to protect its interest in any matter arising hereunder, or to collect damages for the breach of the Subcontract Agreement or to prosecute or defend any suit or arbitration resulting therefrom, or to recover on any bond given by Subcontractor hereunder, Subcontractor and its surety, jointly and severally, agree to pay Contractor for all reasonable costs, charges, expenses, expert fees and attorneys' fees expended or incurred in connection therewith, including, but not limited, any appellate fees incurred in connection with an appeal and all fees incurred in enforcing or collecting a judgment against Subcontractor. To the extent Subcontractor is availing itself of any "prevailing party law," then "prevailing party" shall mean the party receiving affirmative judicial relief in an amount substantially similar to the total amount of damages sought at hearing or arbitration.

14.6 If Contractor shall be required to employ an attorney to enforce or confirm an arbitration award arising from a breach of any of the provisions of this Subcontract Agreement, Subcontractor shall pay all attorneys' fees and costs expended or incurred in connection therewith.

14.7 Subcontractor expressly agrees that any arbitration demand or lawsuit regarding any dispute arising from or in any way connected with this Subcontract Agreement or the Work hereunder, must be filed with the American Arbitration Association or in the appropriate court of law no later than the expiration of two (2) years and one (1) day from the date of the event giving rise to the claim. If the contractual limitations period set forth herein is held to violate Section 16.070 of the Texas Civil Practice and Remedies Code or its equivalent, Subcontractor agrees that this provision shall be reformed to the shortest possible statute of limitations.

14.8 Subcontractor shall include the requirements of this Article 14 in all sub-subcontracts it may enter into for any portion of the Work.

ARTICLE 16 **Miscellaneous Provisions**

15.1 Captions. Captions or paragraph headings included in this Subcontract Agreement are for reference purposes only and shall not modify or limit the statements contained herein.

15.2 Interpretations. All words in this Subcontract Agreement shall be deemed to include any number or gender as the context or sense of this Subcontract Agreement requires. Although drafted by Contractor, this Subcontract Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably and neither more strongly for nor against either party.

15.3 Notice. All notices required under this Subcontract Agreement shall be sent via certified mail return receipt requested to the address set forth in the Subcontract Agreement, via facsimile number listed on the Subcontract Agreement, via hand delivery to the office set forth in the Subcontract Agreement, or via email to the address set forth in the Subcontract Agreement. Notwithstanding anything herein to the contrary, email notifications shall be sufficient for any notices required under the Contract Documents regarding notice of Subcontractor's defaults and deficiencies under the terms of this Agreement. Subcontractor and all of its subcontractors, laborers, vendors and suppliers agree to maintain a fully valid and operational email address. Verbal notification to Contractor will not satisfy the notice requirements herein. To the extent any notice provision of this Subcontract Agreement violates applicable law in that it is too strict or restrictive, the provision shall be automatically modified to the standards mandated by the applicable law and shall not be void.

15.4 Severability. In the event one or more of the provisions of this Subcontract Agreement or any application thereof shall be invalid, unenforceable, or illegal, including, but not limited to, any attempted waiver of Chapter 56 of the Texas Business and Commerce Code or application of any indemnification obligation pursuant to Chapter 151 of the Texas Insurance Code, the validity, enforceability and legality of the remaining provisions and any other application thereof shall not in any way be impaired thereby.

15.5 Entire Agreement and Amendment. This Subcontract Agreement contains and includes the entire understanding of the parties. Any oral agreements, prior proposals, understandings, and

Page: 20

Author: Date: 9/20/2023 2:46:33 PM

If you end up in a courtroom somehow, you waive the right to a jury.

Author: Date: 9/20/2023 2:46:41 PM

No verbal agreements matter.

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correspondence are hereby superseded by this Subcontract Agreement. In addition, Subcontractor waives any claim for fraudulent inducement with respect to this Subcontract Agreement. This Subcontract Agreement may be amended only by an instrument in writing signed by the parties hereto.

15.6 Labor Disputes. Contractor has no control nor seeks any control over the labor relations policy of Subcontractor, however, Subcontractor agrees that if pickets are established by local unions at the job site, that its employees will either cross those picket lines or enter the job site through a different entrance. Subcontractor agrees to establish a separate entrance to the job site as directed by Contractor. Failure of Subcontractor to man the job with a sufficient number of skilled workmen during a labor dispute shall not be a defense to Contractor's remedies under Article 7 or Article 10 under this Subcontract Agreement. Subcontractor agrees that Contractor may take all remedies provided in Article 7 or Article 10 of this Subcontract Agreement should Subcontractor delay the job as the result of a labor dispute of any nature.

15.7 Samples, Submittals and Use of Materials. All samples that are required to be approved shall be submitted by Subcontractor in accordance with the Contract Documents. Shop drawings and submittals, if required, shall be submitted by Subcontractor in sufficient quantities and, after approval, Subcontractor shall furnish final copies for field use as may be requested by Contractor. Any and all required certificates, tests, test reports, and the like shall be furnished by Subcontractor upon Contractor's request. In the event that labor only is furnished by Subcontractor, Subcontractor agrees to use Contractor's materials without waste and agrees to reimburse Contractor for any material ruined or damaged on account of its negligence or carelessness. Material furnished by Contractor shall be considered as delivered to Subcontractor when placed at the curb line of the building on the job site in which it is to be used or any other place designated by Contractor. Quantities of material used daily shall be reported to Contractor. The prices of materials and equipment contained in future Work Orders or Purchase Orders, in conjunction to the Master Service Agreement are those in effect as of the date of execution of the Work Order/Purchase Order. For the purpose of this term, execution is defined as the signing of the Work Order/Purchase Order.

15.8 Independent Contractor. Subcontractor shall be an independent contractor under this Subcontract Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder and any provision in the Subcontract Agreement which may appear to give Contractor the right to direct Subcontractor as to the details of doing the work or as to the exercise of a measure of control over the Work shall be deemed to mean that Subcontractor shall follow the desires of Contractor in the results only.

15.9 Privity. To the fullest extent permitted by law, until Subcontractor's obligations under this Subcontract Agreement are completely fulfilled, Subcontractor agrees not to perform any Work directly for Owner or any of its tenants or deal directly with the Owner's representative in connection with the Project, unless otherwise approved in writing by Contractor. All Work for this Project performed by Subcontractor shall be processed and handled exclusively by and through Contractor.

15.10 Smoking. Subcontractor shall ensure that Subcontractor and all of its subcontractors, laborers, suppliers, vendors and employees are at all times in compliance with Owner's and/or Contractor's no smoking policy on the Project. If any person is found in violation of this policy they will be subject to disciplinary actions, which may include a fine.

15.11 Confidentiality. Subcontractor acknowledges that certain of the Contractor's valuable, confidential and proprietary information, including information regarding clients of Contractor, may come into Subcontractor's possession. Accordingly, Subcontractor agrees to hold all information it obtains from or about Contractor in strictest confidence, not to contact clients of Contractor for the duration of the performance of the Work, not to use such information other than for the performance of the Work, and to cause any of its employees, subcontractors, suppliers, vendors or laborers to whom such information is transmitted to be bound to the same obligation of confidentiality to which Subcontractor is bound. Subcontractor shall not communicate Contractor's information in any form to any third party without Contractor's prior written consent. In the event of any violation of this provision, Contractor shall be entitled to preliminary and permanent injunctive relief as well as an equitable accounting of all profits or benefits arising out of such violation, which remedy shall be in addition to any other rights or remedies to which Contractor may be entitled.

15.12 No general or limited partner, manager, member, officer, director, employee or shareholder of Contractor shall be personally liable for the performance of Contractor's obligations under this Agreement. The liability of Contractor for Contractor's obligations under this Agreement shall be limited to the amount of the Subcontract, and Subcontractor shall not look to any of Contractor's other assets for enforcement or satisfaction of any such obligation, nor shall Subcontractor seek recourse for such enforcement or satisfaction against any general or limited partner, manager, member, officer, director, employee or shareholder of Contractor.

15.13 Request for Documents. If Subcontractor is presented with a request for documents by any entity, governmental or administrative agency or with a subpoena *duces tecum* regarding any records, data or documents which may be in Subcontractor's possession by reason of this Agreement, Subcontractor must immediately give written notice of same to Contractor with the understanding that Contractor will have the opportunity to contest such process by any means available to it before the records or documents are

submitted to a court or other third party. Subcontractor, however, is not obligated to withhold the delivery beyond the time ordered by the court or governmental or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

15.14 Supervision of Work. Subcontractor shall be solely responsible for, and have control over all portions of the Work in accordance with this Agreement. Should it be necessary in Contractor's reasonable opinion, for Contractor to use its own supervisors to manage Subcontractor's laborers, suppliers, subcontractors, vendors or employees on the site, Subcontractor will be back charged a fee for each day that such supervision is necessitated by Subcontractor's acts or omissions.

15.15 Employee Background Check Confirmation. Subcontractor swears and affirms that Subcontractor has obtained, reviewed, and verified as required by Texas Education Code, Section 22.0834 the national criminal history record information from a law enforcement or criminal justice agency for each employee of the Subcontractor and the national criminal history record information from the Texas Department of Safety for each employee of Subcontractor who (a) have or will have continuing duties related to the contracted services, (b) have or will have direct contact with students. Subcontractor further swears and affirms no employees who meet the requirements of (a) or (b) above have been convicted of any offense identified in Section 22.085 of the Texas Education Code. Subcontractor shall submit to Contractor, upon request, the names and records of all employees working onsite.

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Agreed and Accepted:

Company Name: _____

Signature _____

Printed Name: _____

Title: _____

Date: _____

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EXHIBIT A

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CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project: _____

Job No. _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$ _____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date _____

(Company Name)

By: _____

(Signature)

(Title)

STATE OF _____

COUNTY OF _____

This Conditional Waiver and Release on Progress Payment was acknowledged before me on this day of _____, 20____, by _____, on behalf of _____ a _____.

Notary Public - State of _____
My Commission Expires: _____

This page contains no comments

NOTICE: This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project: _____

Job No. _____

The signer of this document has been paid and has received a progress payment in the sum of \$ _____ for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date _____

(Company Name)

By: _____

(Signature)

(Title)

STATE OF _____

COUNTY OF _____

This Unconditional Waiver and Release on Progress Payment was acknowledged before me on this ___ day of _____, 20___, by _____, on behalf of _____ a _____.

Notary Public – State of _____
My Commission Expires: _____

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project: _____

Job No. _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$ _____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date _____

(Company Name)

By: _____

(Signature)

(Title)

STATE OF _____

COUNTY OF _____

This Conditional Waiver and Release on Final Payment was acknowledged before me on this ____ day of _____, 20____, by _____, on behalf of _____ a _____.

Notary Public – State of _____
My Commission Expires: _____

This page contains no comments

NOTICE: This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

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UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project: _____

Job No. _____

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date _____

(Company Name)

By: _____

(Signature)

(Title)

STATE OF _____

COUNTY OF _____

This Unconditional Waiver and Release on Final Payment was acknowledged before me on this ____ day of _____, 20____, by _____, on behalf of _____ a _____.

Notary Public – State of _____
My Commission Expires: _____



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Construction Counselors at Law



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Karalynn Cromeens
*Construction Attorney
& Best-Selling Author*



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30-MIN CONSULT**



THE CROMEENS LAW FIRM, PLLC
Attorneys And Counselors At Law

Contact: 713-715-7334