

DRAFT AIA® Document A401™ – 2017

Standard Form of Agreement Between Contractor and Subcontractor (Gemini V1.3), as amended by the Parties

MASTER SUBCONTRACT AGREEMENT (hereafter “Agreement”) made as of the «» day of «» in the year «»
(In words, indicate day, month and year.)

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

«BNBuilders, Inc.
2601 4th Avenue, Suite #350
Seattle, WA 98121»

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

«Insert Sub Legal Name
Insert Address – tie to Physical Address
City, State, Zip»

«Telephone Number: (XXX) XXX-XXXX»
Fax Number: (XXX) XXX-XXXX»

The Contractor has made a contract for construction (hereinafter, the “Prime Contract”) dated:
«Provided in Each Specific Project Agreement»

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

«Provided in Each Specific Project Agreement»

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

«Provided in Each Specific Project Agreement»

This Master Subcontract Agreement shall be utilized in conjunction with the executed Prime Contract for the particular Project. Subcontractor shall require each sub-subcontractor and or any tiered vendors under their control to be bound by these terms and agreements.

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

«Provided in Each Specific Project Agreement»

Whereas the Contractor and the Subcontractor seek to enter into a Master Agreement for a duration of five (5) years from the date of this Agreement that will automatically terminate after five years from the date of this Agreement. This Master Agreement will

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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

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govern all terms except those items defined in separate Project Agreements. The intent of these Master Agreements is to simplify the negotiation and contracting process by finalizing all contract terms except those related to a specific Project. As such, Contractor and Subcontractor agree as follows:

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ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor, other Contract Documents enumerated therein, and Modifications to the Prime Contract, whether issued before or after the execution of this Agreement (the Prime Contract is incorporated into and made a part of the Subcontract under Article 2 below); (3) other documents listed in this Agreement, including in Article 15; and (4) Modifications to this Agreement or any other Subcontract Documents issued after execution of this Agreement. These form the Subcontract Documents and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein.

§ 1.2 The Subcontract Documents form the Subcontract for Construction (“Subcontract”). The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications to the Prime Contract or this Subcontract issued subsequent to the execution of this Agreement, appears in Article 15. In entering into this Agreement, Subcontractor has not relied upon any statement, estimate, forecast, projection, representation, warranty, action, or agreement of or by the Contractor, except for those expressly contained in this Agreement.

§ 1.3 Not used.

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

§ 1.5 The Subcontract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Contractor and Subcontractor.

§ 1.6 Not used.

ARTICLE 2 INCORPORATION OF THE PRIME CONTRACT (“FLOW DOWN”)

§ 2.1 The Prime Contract provides for the furnishing of labor, materials, equipment, and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor. Subcontractor hereby acknowledges it has reviewed the Prime Contract and agrees to require each sub-subcontractor and or any tiered vendors under their control to be bound by the terms and conditions of this Agreement and the Prime Contract and to provide Contractor with a true and complete copy of any such sub-subcontractor and vendor contracts upon request.

§ 2.2 The Prime Contract is hereby incorporated into and made a part of the Subcontract (i.e., the terms and conditions of the Prime Contract are “flowed down”). The Subcontractor is therefore bound by the Prime Contract and shall assume toward the Contractor all obligations, responsibilities, and liabilities that the Contractor, under the Prime Contract, assumes toward the Owner and others, as applicable, both specifically and generally, to the Subcontract Work. The Contractor shall have the benefit of all rights, remedies, and redress against the Subcontractor that the Owner has against the Contractor under the Prime Contract, in addition to the rights, remedies, and redress set forth herein. In the event of any change in the Prime Contract, Subcontractor shall be bound to the Contractor to the same extent Contractor is bound to the Owner.

§ 2.3 Under this flow down provision, Subcontractor does not assume responsibility for performance of the work of Contractor, or that of other trades or crafts, or for performance of duties under the Prime Contract that are customarily unique to Contractor as the general contractor. However, the Prime Contract is otherwise flowed-down not only with respect to the performance of the Work specifically, but also generally insofar as it applies to the Work. Accordingly, Subcontractor is bound by the general provisions of the Prime Contract, including but not limited to those dealing with changes in the work, costs of the work (as the case may be), accounting records and audits (as the case may be), indemnity (including the parties to be indemnified and the duty to defend), submittals, insurance and bonds, time and schedule, payment, assignment, confidentiality, representations and warranties, safety, notices, delays, defects in the work, warranty with respect to defects in the work, special sales and use tax

requirements that may apply to the Project, cost projections as may be required, claims and dispute resolution, all insofar as they apply to the Work.

§ 2.4 Without limiting the foregoing and/or the general nature of this flow down provision, wherever the Prime Contract requires Contractor to provide Owner with any notice or information, or obtain Owner's prior permission or approval, that applies in any way to Subcontractor or the Work, Subcontractor shall provide Contractor with a corresponding notice or information, or request for permission or approval, not later than five (5) working days before such is due from Contractor to Owner, or as soon as reasonably practicable beforehand should circumstances make the foregoing lead time impossible or unduly burdensome upon Subcontractor.

§ 2.5 All provisions in the Prime Contract that are required therein to be expressly stated in the Subcontract shall be considered fully restated here.

§ 2.6 To the fullest extent possible, the Subcontract Documents, the Prime Contract, and the documents comprising both should be read to supplement and complement each other. Notwithstanding the foregoing, in the event of a conflict, ambiguity, or inconsistency between or within any of them, the more burdensome, costly, and/or stringent provision upon Subcontractor shall govern; provided, however, that any provision under the Subcontract expressly identified as specifically negotiated between Contractor and Subcontractor shall govern.

ARTICLE 3 CONTRACTOR

§ 3.1 General

The Contractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number.

§ 3.2 Services Provided by the Contractor

§ 3.2.1 The Contractor shall reasonably cooperate with the Subcontractor in scheduling and performing the Contractor's work to avoid conflicts or interference in the Subcontractor's Work and shall provide timely written responses to submittals made by the Subcontractor in accordance with Section 4.3 and Article 5. Promptly after execution of a Specific Project Agreement, if requested in writing by Subcontractor, the Contractor shall provide the Subcontractor with the Contractor's most recent construction schedule and schedule of submittals, together with such additional information as may be reasonably necessary to assist the Subcontractor to plan and perform the Subcontractor's Work properly and timely. Subcontractor is responsible to review the Contractor's schedule, monitor the Contractor's schedule for updates, and is bound by the duration, sequences, and completion dates derived by Contractor under its schedule, schedule updates, and on-site scheduling processes such as "pull planning." The Contractor shall endeavor to promptly notify the Subcontractor of subsequent changes in the construction schedule, but Subcontractor shall remain responsible for keeping itself apprised of the schedule for the Contractor's work. Subcontractor agrees to notify Contractor of its obligation to or inability to comply with any schedules, directives, or revisions within five (5) business days of Contractor's issuance of such schedule documents or directives. In the absence of written objection by the Subcontractor, the Subcontractor agrees to be bound by such schedules, directives, or revisions.

§ 3.2.2 Jobsite laydown and storage area is dependent on specific project conditions. Space will be allocated for Subcontractor's use if such space is deemed available and necessary by the Contractor. If during the course of the Subcontractor's Work, the Contractor directs the Subcontractor to repeatedly relocate their stored materials, equipment, or other facilities, Subcontractor will be entitled to reimbursement of its reasonable direct costs necessary for that relocation work, except as otherwise agreed or if such relocation is a result of phasing and/or sequencing of the Subcontractor's Work or the Contractor's work.

§ 3.2.3 In the event Subcontractor uses Contractor's equipment, materials, labor, supplies, or facilities, Subcontractor shall reimburse Contractor at a predetermined rate, as otherwise stated herein, or at the fair market rate if not so predetermined or stated. Further, Subcontractor assumes all responsibility for physical damage to such equipment, materials, labor, supplies, or facilities used by Subcontractor or its agents, employees, or permittees. In the event Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for all related acts or omissions of Contractor's employees. Subcontractor accepts any and all of Contractor's equipment, materials, supplies, or facilities as furnished, "as is," and with all faults and defects, and uses the same at its risk and without any recourse or remedy whatsoever against Contractor for any claim, suit, action, fine, penalty, liability, cost, expense, or damage of any kind Subcontractor may incur, directly or indirectly, as a result of the use, including misuse, or any fault or defect.

§ 3.3 Communications

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

§ 3.3.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's sub-subcontractors or suppliers unless such persons are designated as authorized representatives of the Subcontractor, exigent circumstances exist, or Subcontractor has or is neglecting to provide timely and proper instructions or orders.

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

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

§ 3.3.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include, to the best of Contractor's information and belief, a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein.

§ 3.3.6 If the Contractor asserts a Claim against, or defends a claim by, the Owner that relates to the Work of the Subcontractor, the Contractor shall timely make available to the Subcontractor all information relating to the portion of the claim that relates to the Work of the Subcontractor and the Subcontractor shall, at its cost and expense, cooperate with Contractor by providing all relevant documents, claim preparation, experts, legal analysis and bases, and witnesses upon request.

§ 3.4 Claims by the Contractor

§ 3.4.1 If Subcontractor defaults in performance of the Work or otherwise commits any act which causes delay to the Contractor's work or the work of others on the Project, Subcontractor shall be liable for all losses, costs, expenses, liabilities, and damages sustained by Contractor, including any consequential damages and liquidated damages for which Contractor may be liable to Owner or any other party because of Subcontractor's default or delay.

§ 3.5 Contractor's Remedies

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Master Agreement, and fails within three (3) working days after receipt of notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, to Contractor's satisfaction, the Contractor may, without prejudice to other remedies the Contractor may have, remedy such default or neglect and withhold, in accordance with Section 11.1.7.2, the reasonable cost and damages incurred or anticipated by Contractor thereof from current or future payments due the Subcontractor. If payments due to the Subcontractor are not sufficient to cover such amounts, the Subcontractor shall pay the difference to the Contractor. Notwithstanding the foregoing notice requirement, Contractor may, but shall not be obligated to, remedy any default or neglect in Subcontractor's performance under the Master Agreement without notice under exigent circumstances or where Contractor reasonably anticipates that it or another party will suffer or incur further or increased costs or damages otherwise.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 General

The Subcontractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Subcontractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Subcontractor shall designate in writing a representative who shall hereby have actual authority to act on behalf of and bind the Subcontractor with respect to each specific Project.

§ 4.2 Execution and Progress of the Work

§ 4.2.1 Without limiting Contractor's rights under Section 7.4.1 below, for all portions of the Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with such sub-subcontractors by which the Subcontractor and the sub-subcontractor are mutually bound, to the extent of the Work to be performed by the sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.2.2 Subcontractor agrees to start the Subcontract Work on the date indicated in the Project Schedule (**Attachment E**) provided in each Specific Project Agreement and, any revision thereto, or as otherwise directed by the Contractor and to proceed in a diligent manner in accordance with the Project Schedule, any revisions thereto, or as Contractor may otherwise direct.

§ 4.2.3 The Subcontractor shall supervise and direct the Subcontractor's Work and shall cooperate with the Contractor in scheduling and performing the Subcontract Work to avoid conflict, delay in, or interference with the Contractor's work, other subcontractors, the Owner, or Separate Contractors.

§ 4.2.4 The Subcontractor shall furnish to the Contractor monthly (or such other period as directed in writing by Contractor) progress reports on the Work of this Subcontract including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit. Furnishing of such progress reports is of the essence and is a condition precedent to Subcontractor's substantial performance of the Subcontract and its right to payment(s).

§ 4.2.5 The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract.

§ 4.2.6 The Subcontractor shall pay for all materials, equipment, and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor and shall furnish satisfactory evidence and releases provided in **Attachment B**, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.2.7 The Subcontractor shall take necessary precautions to properly protect existing conditions and the work of the Contractor, Separate Contractors, and other subcontractors from damage caused by operations under this Subcontract. Except for losses covered by insurance and for which no party has a right of recovery, including subrogation, against Subcontractor, Subcontractor shall be liable for any loss or damage to any existing conditions, any work in place or to any equipment and materials on the job site caused by Subcontractor or its sub-subcontractors, suppliers, agents, employees, guests, or other party for which Subcontractor is responsible. Without limiting Subcontractor's right to any insurance proceeds to which it may be entitled, all Subcontract Work, whether performed at the site or in preparing or delivering assemblies, materials, and/or equipment to the site, shall be at the risk of Subcontractor exclusively until the Subcontract Work is completed and accepted by Contractor, Owner, and Architect.

§ 4.2.8 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and Separate Contractors whose work might affect the Subcontractor's Work, or whose work might be affected by the same. The Subcontractor shall participate in the preparation of coordinated drawings as directed by the Contractor, and/or if required by the Prime Contract, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or Separate Contractors.

§ 4.3 Submittals

§ 4.3.1 The Subcontractor shall submit Shop Drawings, Product Data, Samples, and similar submittals required by the Subcontract Documents with such promptness and in such sequence as to allow reasonable review and approval time of the submitted materials by both the Contractor and Owner/Architect and cause no delay in the Work or in the activities of the Contractor or other subcontractors (and in no event beyond the timeline mandated by the Prime Contract and/or the Project Schedule attached as **Attachment E** to a Specific Project Agreement).

§ 4.3.2 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Subcontractor represents to the Contractor that the Subcontractor has (1) reviewed and approved them; (2) determined and verified materials,

field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Subcontract Documents.

§ 4.4 Permits, Fees, Notices, Independent Contractor, and Compliance with Laws

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

§ 4.4.2 Subcontractor is an independent contractor. Subcontractor shall comply with all Federal, state, and local tax laws; social security acts; unemployment compensation acts; and workers' compensation acts, insofar as applicable to the performance of this Subcontract. Subcontractor shall timely pay, or cause its sub-subcontractors or suppliers to pay, all taxes, tariffs, contributions, premiums, assessments, or fees imposed directly or indirectly on account of the Subcontract Work, including those payable on its employees or on its operations under Worker's Compensation Laws, employment Welfare Benefit Plans, gross business and/or occupation taxes, corporate activities taxes, and sales and use taxes and any other taxes, contributions and/or premiums which may become payable by operation of law or contract, including contributions payable by the employees. Subcontractor shall defend and indemnify Contractor against (i) all liability, loss and expense resulting from Subcontractor's failure and/or alleged failure to comply with such requirements and (ii) any audits or inspections to confirm Subcontractor's compliance with such requirements. At no time shall there be any increase in the Subcontract Price on account of any such tax or charge unless allowed by the Prime Contract. Subcontractor shall, if requested by Contractor, substantiate that all taxes and other charges have been and are being paid. If any audit, claim or demand is made against Contractor for any matter enumerated herein, Subcontractor shall pay Contractor for any costs and expenses, including reasonable attorney's fees incurred by Contractor on account thereof.

§ 4.5 Safety Precautions and Procedures

§ 4.5.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, including those precautions contained in **Attachment G**. The Subcontractor shall further comply with the safety measures, plans, or programs initiated or adopted by the Contractor and/or Owner for each specific Project and with all applicable laws, statutes, ordinances, codes, rules, regulations, and lawful orders of public authorities for the safety of persons and property. The Subcontractor shall notify the Contractor within twenty-four (24) hours of an injury and/or "near miss" (i.e., an incident that could have caused injury but for chance or intervention) to an employee or agent of the Subcontractor which occurred at the site.

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

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

§ 4.5.4 The Subcontractor shall reimburse the Contractor for the cost and expense the Contractor incurs (1) for remediation of a hazardous material or substance brought to the site and negligently handled by the Subcontractor or anyone for whom Subcontractor may be liable, or (2) where the Subcontractor fails to perform its obligations under Section 4.5.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence. Without

limiting the foregoing or Subcontractor's indemnity duties under Section 4.8 below, the Subcontractor shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless the Contractor and its agents and employees from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, expert witness fees, personnel costs, and costs of suit, arising out of or resulting from contact or exposure with or to the hazardous materials or substances contemplated under Sections 4.5.2 and/or 4.5.3 provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) and except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.6 Cleaning Up

§ 4.6.1 The Subcontractor shall at all times keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.6.2 If the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

§ 4.7 Warranty

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

§ 4.7.2 Additional Warranty—Correction of the Work. In addition to Subcontractor's obligations under Section 4.7.1 above, in the event that any part of the Subcontractor's Work furnished under this Subcontract is determined by Contractor, Owner, or Architect to be improper, defective, or otherwise fails to conform to the Subcontract Documents, either during the performance of the Work or until the later of (a) the end of any "period for correction of the Work" (e.g., such as that set forth in Section 12.2.2.1 of the AIA A201-2017 general conditions template) provided in the Prime Contract or other Subcontract Documents, or (b) one (1) year from completion and acceptance of the Project by Owner, Subcontractor shall, within two (2) days after notification by Contractor to do so, proceed and diligently prosecute to completion to remove, dispose of, and replace the same, and make good all work damaged or destroyed by or as a result of such defective, improper, or nonconforming Work, or by the taking down, removal, or replacement thereof, at Subcontractor's own cost and expense. If Subcontractor shall fail to do so, Contractor, at its option, may replace or correct the same. Subcontractor agrees to pay Contractor all costs, expenses, fees (including consultants' and attorneys' fees), liabilities, and damages of any kind incurred by Contractor, directly or indirectly to others including the Owner, in connection with any defective Work of Subcontractor, including said replacements or corrections, whether said replacements or corrections are removed, disposed of, and replaced by Subcontractor or Contractor or by others.

§ 4.7.3 Subcontractor's obligations under Section 4.7.2 shall be in addition to and not in limitation of Subcontractor's obligations under Section 4.7.1, any other warranty or remedy required by law or by the Subcontract Documents, and shall not otherwise affect Contractor's rights or remedies for breach of any warranty or covenant by Subcontractor hereunder.

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

§ 4.8 Indemnification

§ 4.8.1 Subcontractor shall defend, indemnify, and hold harmless Contractor and others in accordance with **Attachment F**.

§ 4.9 Professional Services Provided by Subcontractor

§ 4.9.1 The Subcontractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by a Specific Project Agreement or unless the Subcontractor is required to provide such services in order to carry out the Subcontractor's responsibilities for its own construction means, methods, techniques, sequences, and procedures. The Subcontractor shall not be required to provide professional services in violation of applicable law. In the event such services are required by the Subcontract Documents, the standard of care applicable to such services shall be as set forth therein.

§ 4.9.2 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Subcontractor by a Specific Project Agreement, the Contractor will provide all performance and design criteria that such services must satisfy to the extent the Contractor has received such performance and design criteria from the Owner and Architect under the terms of the Prime Contract.

§ 4.9.3 If professional design services or certifications by a design professional are required because of means, methods, techniques, sequences, or procedures required by the Contractor and related to the Work of the Subcontractor, the Contractor will provide all performance and design criteria that such services must satisfy.

§ 4.9.4 The Subcontractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the performance and design criteria received from the Contractor under this Section 4.9.

§ 4.9.5 The Subcontractor shall cause the professional services performed under this Section 4.9 to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop drawings and other submittals related to the Work designed by such design professional shall bear the professional's written approval when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals, provided the Contractor has provided to the Subcontractor all performance and design criteria required by this Section 4.9.

§ 4.10 Nature of the Work

§ 4.10.1 Subcontractor has satisfied itself as to the nature, conditions, and location of the work, the equipment, materials, and manpower needed which can in any manner affect the Work under this Subcontract and acknowledges that the Subcontractor has had a reasonable opportunity to examine the site. Prior to commencing Work, the Subcontractor shall examine the site and any surface upon which its Work is to be performed, and shall notify the Contractor in writing of any conditions which might adversely affect its Work; failure to do so will constitute a waiver of entitlement to any additional compensation or contract time arising out of such conditions.

§ 4.11 Labor Relations

§ 4.11.1 Subcontractor acknowledges Contractor is signatory to collective bargaining agreements with certain unions for certain trades as set forth in **Attachment F**. For any Subcontract Work claimed or covered by any such union(s) or collective bargaining agreement(s), Subcontractor, at Contractor's sole and exclusive discretion, shall (i) enter into a project labor agreement; (ii) comply with the terms and conditions of the applicable collective bargaining agreement(s); and/or (iii) employ only members of the union(s) at the jobsite for the Subcontract Work. Subcontractor shall adhere to any dual gate policy implemented on the Project and with any labor-harmony requirement under the Subcontract Documents. Should there be picketing at the Project site and Contractor establishes a dual gate system, Subcontractor shall continue the proper performance of the Subcontract Work without interruption or delay and shall utilize the gate to which it is assigned by Contractor and cause its sub-subcontractors, suppliers, and other vendors to do the same.

§ 4.11.2 Subcontractor shall comply with all equal employment opportunity and affirmative action requirements promulgated by any governmental authority, including, without limitation, the requirements of the Civil Rights Act of 1964, and all applicable federal, state, and local labor laws and regulations covering the Subcontract Work. Additionally, Contractor has a zero-tolerance policy prohibiting discrimination, harassment, bullying, and bias-motivated actions in the workplace. All persons working in a facility operated or under the control of Contractor,

including its offices, and/or working on or for a Contractor project, are subject to the policy and may be required to review the written policy document and to acknowledge and agree to the policy as detailed in the writing. Regardless of any such acknowledgment or agreement, persons who violate the policy are subject to permanent debarment from Contractor's facilities, offices, and projects. Subcontractor agrees to (i) enforce the policy with respect to its employees, other constituents, agents, and any other person for which it is responsible, directly or indirectly, including persons working for Subcontractor's sub-subcontractors, suppliers, agents, and other vendors; (ii) cooperate with Contractor in any investigation that may arise under the policy; and (iii) debar any person under the Subcontractor's control, as contemplated above, from any Contractor's facilities, offices, and/or projects as Contractor may direct in writing as a result of any alleged violation of the policy and Contractor's follow up investigation and findings.

ARTICLE 5 CHANGES IN THE WORK

§ 5.1 The Owner may make changes in the Contractor's work that changes or affects the Subcontract Work by issuing Modifications or otherwise directing changes as set forth in the Prime Contract, which may include construction change directives or instructions to proceed with the change and to simultaneously or upon completion provide a change order proposal. Upon receipt of a Modification or such other direction by Owner to the Prime Contract issued subsequent to the execution of this Agreement, the Contractor shall timely notify the Subcontractor of such Modification or direction. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Subcontract Work that would be inconsistent with the changes made by the Modification to or direction under the Prime Contract and shall proceed with changes in the Subcontract Work as directed by the Contractor in writing.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work consisting of additions, deletions, or other revisions, including those required by Modifications to, or other Owner directed changes under the Prime Contract issued subsequent to the execution of any Specific Project Agreement, with the Subcontract Sum and the Subcontract Time adjusted in accordance with this Agreement. If Contractor and Subcontractor cannot agree on a change order, Subcontractor shall nonetheless timely perform the change at Contractor's written direction and Subcontractor may proceed with a claim in accordance with the requirements of Article 6, including the notice requirement.

§ 5.3 If a condition or occurrence arises that Subcontractor believes gives rise to a change in the Subcontract Work, impacts or delays Subcontractor's time for performance or the cost of the Subcontract Work, Subcontractor shall promptly notify Contractor in writing after Subcontractor discovers the condition or occurrence, but in no event more than five (5) working days after discovery of the condition or occurrence unless a shorter time is required by the Prime Contract. The requirement to give such notice shall also apply to conditions or occurrences Subcontractor may not have discovered but reasonably should have and, in any case, in no way shall be deemed to authorize or furnish entitlement for recovery for schedule, cost impacts, or any other form of relief which may be sought by Subcontractor.

§ 5.4 Within the shorter of (a) five (5) business days after Subcontractor's notice to Contractor under Section 5.3, or (b) two (2) working days preceding the time by which the Contractor must submit a claim to the Owner as required by the Prime Contract, Subcontractor shall submit to Contractor a complete change order request detailing the time and cost requested with full and complete back up documentation to sufficiently substantiate the request to Contractor's satisfaction. If additional information or documentation is requested by Contractor, Subcontractor shall promptly supplement the change order request with such additional information.

§ 5.5 Subcontractor shall not proceed with changes in the Subcontract Work until after (i) Contractor and Subcontractor have executed a written change order; (ii) Contractor has directed Subcontractor in writing to proceed on a T&M basis under Section 5.6 below (iii) Contractor has directed Subcontractor in writing to proceed pursuant to an Owner initiated change under Section 5.1 above; or (iv) Contractor has directed Subcontractor in writing to proceed where Contractor and Subcontractor disagree on the price, time, terms, and/or conditions of the change order but Subcontractor shall proceed and may make a claim pursuant to Article 6 herein.

§ 5.6 Contractor may direct the Subcontractor in writing to proceed with changes to the Work on a time and material basis ("T&M"). For such T&M work, Subcontractor shall submit, on a daily basis and no later than 10:00 AM on the day following the day upon which the T&M work was performed, tickets documenting the labor, materials, and equipment expended for signature by Contractor's authorized representative. Contractor's sole authorized representative shall be only the Project Manager for the Project, or such other person as they may designate in writing. The signature of Contractor's authorized representative will constitute acknowledgment and certification

that the work was performed under the Contractor's direction and that the time and materials indicated on the T&M ticket are true and correct. The signature of Contractor's authorized representative shall not constitute agreement that the work of the T&M ticket has been performed in accordance with the requirements applicable to the T&M work, which shall remain Subcontractor's responsibility. Subcontractor shall not be entitled to payment for any T&M work claimed to have been performed when the T&M tickets documenting such work have not been duly signed by Contractor's authorized representative.

§ 5.7 Adjustments made to the Subcontract for change orders under this Article 5 shall represent the total compensation and final settlement due for the change, including but not limited to all direct costs of materials, equipment, labor, and otherwise, overhead and profit, insurance, bonds, permits, applicable taxes, indirect costs, schedule impacts, delay, loss of productivity, disruption, acceleration, resource leveling, manpower shifts, additional supervision, consumables, extended activity durations, increased number of activities, modified critical path, inefficiency, reduction in either total or free float, impact, ripple effect, stacking effect, extended overhead, storage, start/completion date changes, cumulative impact, and any other costs arising out of the modification or the modification combined with other modifications. If the change to the Subcontract Work arises out of or results from a directive or request originating with Owner, the adjustment to the Subcontract for price and/or the time shall be limited to that amount or length of time approved by Owner.

§ 5.8 Subcontractor acknowledges that Contractor will be materially and unfairly prejudiced by Subcontractor's failure to strictly comply with the requirements of this Article 5 and agrees that compliance with same is of the essence and a condition precedent to Subcontractor's right to a change order or claim for a change. In the event Subcontractor fails to so comply, Subcontractor's failure shall constitute an absolute and irrevocable waiver by Subcontractor of its right to a change order and/or claim based upon the condition or occurrence.

ARTICLE 6 CLAIMS AND DISPUTES

§ 6.1 Claims not Involving the Owner

§ 6.1.1 All claims, disputes, and matters in question arising out of or related to this Master Agreement that do not involve Owner shall be decided by litigation. Contractor shall have the sole and final authority to determine whether the claim, dispute, or matter involves the Owner. The law that applies and venue for litigation shall be as set forth in **Attachment F**.

§ 6.1.2 Subcontractor shall give Contractor written notice of its intent to make a claim whether for an extension of time, an adjustment in the Subcontract Sum, or both. The notice shall describe with factual particularity (a) the condition or occurrence giving rise to Subcontractor's claim and (b) the portion of the Subcontract Work known to be affected. In all cases, such notice shall be given to and received by Contractor in writing within ten days (10) days after Subcontractor knows, or with reasonable diligence should have known, of the condition or occurrence upon which Subcontractor's claim is based. Should the claim be based upon the rejection of a change order proposed or demanded by Subcontractor, the notice period shall begin at the time of rejection or, where the Parties do not agree on the change order, upon Contractor's written notice to proceed with the change, whichever shall last occur.

§ 6.1.3 The giving of the notice of claim required hereunder shall be a condition precedent to Subcontractor's right to make and recover upon the claim. Subcontractor shall provide Contractor with a full and complete statement of the claim, along with the time and costs claimed and full and complete backup documentation to sufficiently substantiate the claim, to Contractor's satisfaction, when and as reasonably directed by Contractor but in no case more than twenty (20) calendar days after the notice. Contractor shall have thirty (30) calendar days from the time it receives Subcontractor's full and complete claims package, as determined in Contractor's sole discretion, to review and accept or reject Subcontractor's claim, in whole or in part, as a condition precedent to Subcontractor proceeding with any binding dispute resolution process on such claim.

§ 6.1.4 Prior to and as a condition precedent to any formal dispute resolution proceedings, the Parties agree to participate in mediation using a mediator as mutually agreed between the Parties. A request for mediation shall be made in writing, delivered to the other Party to the Subcontract. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order. The Parties shall share the mediator's fee. The mediation shall be held within the proper limits of the city in which the office of Contractor responsible for administering and constructing the Project is located. Agreements reached in mediation shall be

enforceable as settlement agreements in any court having jurisdiction thereof. In the event the Parties are unable, through their best efforts and good faith, to conduct the mediation within sixty (60) days from the date of the request, this mediation condition precedent to formal dispute resolution proceedings shall expire and either party may proceed with such proceedings.

§ 6.1.5 Contractor and Subcontractor waive claims against each other for consequential, special, exemplary, or punitive damages arising out of or relating to this Subcontract; provided, however, the foregoing shall not apply to, and Contractor does not waive, (a) Contractor's right to recover liquidated, consequential, or other damages that Owner or any other party is entitled to recover against Contractor under the Prime Contract; (b) delay damages as allowed by this Subcontract; (c) Subcontractor's indemnity obligations under this Subcontract, including consequential damages of any third parties; or (d) losses covered by insurance required by this Subcontract.

§ 6.1.6 To the fullest extent permitted by law, Subcontractor shall not be entitled to, and hereby expressly waives any and all claims for any productivity losses, efficiency losses, increased supervisory costs, home office overhead, extended job site overhead, disruption costs, "ripple effect" costs, trade stacking, compression, acceleration, lost profits, lost opportunity costs, or damages, costs, or monetary relief of any other type relating to or arising out of any delay, disruption, or suspension of the Work, unless and except to the extent of such sums (if any) as may be actually recovered and received by Contractor from Owner on behalf of Subcontractor.

§ 6.2 Claims Involving the Owner

§ 6.2.1 All claims, disputes, and matters in question arising out of or relating to this Subcontract that involve Owner shall be decided by the claims and/or dispute resolution procedure specified in the Prime Contract, including but not limited to all notice, applicable law, venue, and arbitration provisions. Subcontractor agrees to strictly abide and be bound by such provisions and to joinder in any proceeding, or consolidation with any other proceeding, including arbitration, involving the Owner where Subcontractor is advancing a pass-through claim, as more fully set forth below, is substantially involved in the underlying transaction or occurrence, or that involves a common question of law or fact.

§ 6.2.2 For any affirmative claim, dispute, or matter asserted by Subcontractor involving an increase in Subcontractor's costs or time of performance or sufferance of other damages primarily caused by Owner and not otherwise waived under the Subcontract, Subcontractor hereby acknowledges and agrees that such a claim, dispute, or matter shall be a "Pass-Through Claim" to be prosecuted consistent with this Section 6.2. Contractor may require, at its option, that Subcontractor enter into a separate Pass-Through Claim agreement in a form acceptable to Contractor. In all cases, Subcontractor's relief shall be limited to that which Contractor can obtain from Owner on behalf of Subcontractor.

§ 6.2.3 Contractor shall have sole discretion to determine if the Pass-Through Claim is bona fide on its face, including but not limited to in terms of entitlement and magnitude. Should Contractor deem the claim so bona fide, Contractor shall assert the claim against Owner on Subcontractor's behalf and Contractor shall remain liable to Subcontractor for the claim only to the extent of Contractor's recovery from Owner on account of Subcontractor. In the event Contractor deems the claim not bona fide, Contractor shall not advance the claim and shall have no liability to Subcontractor therefor, and Subcontractor hereby waives any right of recovery it may have against Contractor for the same.

§ 6.2.4 Pass-Through Claims advanced by Contractor on Subcontractor's behalf shall be at Subcontractor's sole cost and expense, including but not limited to attorneys' fees, costs of suit, expert witness' fees, Contractor's administrative and personnel expenses, and Contractor's reasonable markup on all claim related costs incurred by Contractor. Contractor shall retain sole authority and control over prosecution of the claim, including how and by which party the claim is presented, and settlement. In all cases, Subcontractor shall cooperate fully, diligently, and timely in prosecution of the claim, as Contractor directs, and shall be responsible for the preparation and maintenance of all necessary substantiating data and proof. Subcontractor will indemnify and hold Contractor harmless from any counterclaims asserted by Owner arising out of or related to the Subcontract Work and/or the prosecution of the claim.

§ 6.2.5 Subcontractor shall be bound by the outcome on the Pass-Through Claim. In the event the claim is settled, decided, arbitrated, or adjudicated in favor of Subcontractor, Subcontractor shall be entitled to that portion of the recovery specifically allocated to Subcontractor thereunder, or as may be equitable under the circumstances if no such allocation is made, which in any case shall be payable by Contractor only out of funds actually received by

Contractor from Owner on the settlement, decision, judgment, or award. Contractor shall be entitled to seek overhead and profit on the claim and to retain any amount allowed or allocated therefor under the settlement, decision, judgment, or award, from any amounts received from Owner on the claim.

§ 6.3 Continued Performance. In the event of any dispute between Contractor and Subcontractor under the Subcontract, whether or not involving Owner, Subcontractor will not stop working, but will prosecute the Subcontract Work diligently to completion, the dispute to be submitted for resolution in accordance with this Article 6.

§ 6.4 Waiver of Trial by Jury. Subcontractor expressly waives its right to trial by jury in any litigation to which it is or becomes a party under the provisions of the Subcontract. Subcontractor agrees to expressly include this condition in every subcontract and agreement for materials, supplies, labor, or equipment entered into by Subcontractor relating to the Subcontract Work.

ARTICLE 7 TERMINATION, SUSPENSION, OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 Termination by the Contractor for Cause

§ 7.1.1 If the Subcontractor (i) repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents; (ii) commits any material breach of the Subcontract; (iii) sells any accounts receivable to any creditor, lender; or other party; (iv) voluntarily or involuntarily enters any bankruptcy or receivership; or (v) otherwise fails to perform in accordance with this Subcontract and, except for under (iii) above, fails within a three (3) day period after receipt of written notice from Contractor to commence and continue correction of such failure, default, act, or neglect with diligence and promptness, as determined by Contractor in its sole discretion, then Subcontractor shall be in Default and the Contractor may without further notice to the Subcontractor and without prejudice to any other right or remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the Contractor's costs and expenses of finishing the Subcontractor's Work, including attorney's fees and consultant's fees, and other damages incurred by the Contractor, plus a markup of twenty-five percent (25%) of the total of the foregoing as Contractor's fee, such excess shall be paid to the Subcontractor. If not, the Subcontractor shall pay the difference to the Contractor within five (5) days of notification by Contractor.

§ 7.2 Termination Under Termination of Contractor by the Owner; Termination by Contractor for Convenience

§ 7.2.1 If the Owner terminates the Prime Contract for any reason, including for cause or for the Owner's convenience, the Contractor may, subject to any right of the Owner to take an assignment of the Subcontract, terminate this Subcontract upon written notice to the Subcontractor. In addition, Contractor may, at any time and for any reason, in its sole and absolute discretion, terminate this Master Agreement or any Specific Project Agreement for convenience by written notice and, unless indicated otherwise in such notice, the termination shall be effective immediately upon receipt.

§ 7.2.2 Upon receipt of written notice of such termination, the Subcontractor shall

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

§ 7.2.3 Where the basis for termination of this Master Agreement or any Specific Project Agreement is the Contractor's convenience, the Subcontractor shall be entitled to receive payment for Work executed up to the date of termination, plus its reasonable demobilization costs actually incurred by reason of such termination, but not overhead and profit on the Work not executed.

§ 7.2.4 Where the basis for termination of this Subcontract is the Owner's termination of Contractor for Owner's convenience (if applicable), the Subcontractor shall be entitled to receive payment as set forth in Section 7.2.3 above (but not overhead and profit on the Work not executed), except as may be otherwise provided under the Prime Contract.

§ 7.3 Suspension of the Work. The Contractor may, with or without cause, order the Subcontractor in writing to suspend, delay, or interrupt the Work under any Specific Project Agreement in whole or in part, for such period of

time as the Contractor may determine. In the event of suspension ordered by the Contractor without fault of the Subcontractor, the Subcontractor may be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum provided that no adjustment shall be made to the extent that performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Subcontractor is responsible or an equitable adjustment is made or denied under another provision of this Subcontract.

§ 7.4 Assignment of the Subcontract

§ 7.4.1 Subcontractor shall not, without written consent of Contractor, assign, transfer, delegate, or sublet any portion or part of the Subcontract Work or assign any payment under the Subcontract to others. Without limiting the foregoing, Subcontractor shall enter into written agreements with its sub-subcontractors, suppliers, and other vendors that bind them to the same terms and conditions of the Subcontract and the Subcontract Documents. Where Contractor consents to the assignment of the whole of the Subcontract, Subcontractor agrees that it and its assignee will both execute Contractor's form of consent, that Subcontractor will remain jointly and severally liable on the Subcontract, and that the assignee will assume all obligations of the Subcontract, both before and after the assignment.

§ 7.4.2 Contractor may assign the Subcontract without Subcontractor's consent. If the Prime Contract requires assignment of the Subcontract by Contractor to Owner, whether automatically, contingently, or otherwise, Subcontractor acknowledges and hereby agrees to such assignment and does so in accordance with the terms and conditions of the Prime Contract. In the event Owner is an intended third-party beneficiary of the Subcontract under the Prime Contract, Owner shall have the accompanying rights as set forth under the Prime Contract and/or available at law. Upon any assignment of the Subcontract to Owner, Subcontractor forever waives any and all claims, suits, actions, fines, penalties, liabilities, costs, expenses, or damages of any kind whatsoever, direct or indirect, Subcontractor may have against Contractor, past, present, or future, known or unknown, arising out of or related to the Subcontract, the Project, the Subcontract Work, or Subcontractor's services on the Project except for claims for payment otherwise properly due under the Subcontract for Subcontract Work performed prior to such assignment and for which Owner has paid Contractor on account of Subcontractor.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

§ 8.1 The Subcontractor shall execute the work as described in **Attachments C** and **C.1** provided in each Specific Project Agreement in conformance with this Agreement and the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others (collectively, the "Subcontractor's Work", "Subcontract Work", "Work", or similar reference).

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 The date of commencement of the Subcontractor's Work, shall be:
(Check one of the following boxes.)

- [« »] The date of this Agreement.
- [«X»] Per **Attachment E** as provided in each Specific Project Agreement.
- [« »] Established as follows:
(Insert a date or a means to determine the date of commencement of the Subcontractor's Work.)

« »

§ 9.2 Subcontract Time and Delays to Subcontractor's Work

§ 9.2.1 Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for completion of the Work described in the Subcontract Documents. The Subcontract Time shall be measured from the date of commencement of the Subcontractor's Work as required by the Subcontract Documents and per **Attachment E** (as provided in each Specific Project Agreement).

§ 9.2.2 Subject to adjustments of the Subcontract Time as provided in the Subcontract Documents, the subcontractor shall achieve substantial completion of the Subcontractor's Work as required by the Subcontract Documents and per **Attachment E** (as provided in each Specific Project Agreement).

§ 9.2.3 Subject to adjustments of the Subcontract Time as provided in the Subcontract Documents, if portions of the Subcontractor's Work are to be completed prior to substantial completion of the Subcontractor's Work, then the Subcontractor shall achieve earlier substantial completion of such portions by the dates set forth in **Attachment E** (as provided in each Project Amendment).

§ 9.2.4 Not used.

§ 9.3 With respect to the obligations of the Subcontractor, time is of the essence of this Subcontract. Subcontractor's strict compliance with its duties relating to the time for performance under the Subcontract is a condition precedent to Subcontractor's substantial performance of the Subcontract.

§ 9.4 No extension of time will be provided unless Subcontractor strictly complies with the provisions of Article 5 as they relate to time.

§ 9.5 To the fullest extent permitted by law, Subcontractor's sole remedy for delay, disruption, or suspension of the Work, including without limitation any delay, disruption, or suspension caused by the fault or negligence of Owner, Contractor (or any agent or representative thereof), or from any other cause whatsoever, shall be an extension of the time for performance, and then only to the extent such a time extension is granted to Contractor by Owner.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor the Subcontract Sum in current funds received from the Owner for the Subcontractor's proper performance of the Subcontract. The Subcontract Sum shall be «as provided in each Specific Project Agreement» (\$ «TBD»), subject to additions and deductions as provided in the Subcontract Documents.

ARTICLE 11 PAYMENTS

§ 11.1 Progress Payments

§ 11.1.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Architect, and certificates for payment issued by the Architect, the Contractor shall make progress payments, from payments received by Contractor from the Owner on account of the Subcontract Sum, to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Payments received by the Subcontractor for Work properly performed by its employees, sub-subcontractors and suppliers shall be held by the Subcontractor in trust for those employees, sub-subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Subcontractor for which payment was made to the Subcontractor by the Contractor. Nothing contained herein shall require money received by Contractor on account of Subcontractor to be placed in a separate account and not commingled with other money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 11.1.2 The Subcontractor agrees to furnish, if and when required by Contractor, substantiating payroll affidavits, receipts, vouchers, releases of claims for labor, and material, and agrees to furnish same from its sub-subcontractors, suppliers, and/or other vendors performing work or furnishing materials under the Subcontract, all in form satisfactory to Contractor, and it is agreed that no payment hereunder shall be required to be made, except at Contractor's option, unless and until such substantiating documents have been furnished.

§ 11.1.3 The period covered by each application for payment shall be one (1) calendar month ending on the last day of the month, or as required in the Prime Contract, or as follows:

«Provided in each Specific Project Agreement»

§ 11.1.4 Provided a proper application for payment is received by the Contractor not later than the 20th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Architect. The Contractor shall pay the Subcontractor each progress payment no later than ten (10) working days after the Contractor receives payment from the Owner. If the Subcontractor's application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect. Contractor, at its option, may make any payment due hereunder by check made payable

jointly to Subcontractor and any of its Sub-subcontractors, suppliers, and/or other vendors who have performed work or furnished materials to Subcontractor.

§ 11.1.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require, and, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

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

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

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

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

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

- .1 The aggregate of previous payments made by the Contractor;
- .2 Amounts Contractor may deem necessary to protect Contractor from loss or damage attributable to Subcontractor under Section 11.1.7.3 below; and
- .4 Retainage withheld pursuant to Section 11.1.8 of this Agreement.

§ 11.1.7.3 To the fullest extent allowed under the law, Contractor, at its sole discretion, may withhold payment, or on account of subsequently discovered evidence nullify the whole or part of any payment previously made, to the extent necessary to protect Contractor from loss or damage attributable to Subcontractor, including attorneys' fees, expert witness' fees, and other legal costs, on account of (1) defective Subcontract Work not remedied; (2) claims filed or reasonable evidence indicating the probable filing of a claim; (3) failure of Subcontractor to make payments properly due to its sub-subcontractors, suppliers, other vendors, or for fringe benefits; (4) a reasonable doubt that the Subcontract can be completed for the balance then unpaid; (5) damage to another subcontractor, contractor, supplier, service provider, or other vendor, or the work or property of any of them; (6) penalties assessed against Contractor or Subcontractor for failure of Subcontractor to comply with state, federal, or local law; (7) a reasonable doubt Subcontractor will complete the Subcontract Work according to the time and/or schedule requirements; (8) a breach of the Subcontract or any other contract between Contractor and Subcontractor; (9) as otherwise provided under the Subcontract Documents; and/or (10) any other ground allowed by law. Contractor may also withhold any payment pending submission by Subcontractor of all documents required under the Subcontract Documents or otherwise, including but not limited to certified payrolls, submittals, safety plans, certificates of insurance and endorsements (and policies if requested), and performance and payment bonds, all in their proper form. In the event Subcontractor is performing work on another project(s) under a separate subcontract(s) and under that separate subcontract(s) Contractor has reason to withhold payment for any of the reasons set forth above but Contractor deems that amounts owed by Contractor to Subcontractor under that separate subcontract(s) will be insufficient to protect Contractor from loss or damage, Contractor may withhold payment(s) under this Subcontract to protect itself from such loss or damage.

§ 11.1.8 Retainage

For each progress payment made prior to substantial completion of the Subcontractor's Work, the Contractor may withhold retainage from the payment otherwise due in an amount set forth in **Attachment F**. Retainage shall be paid

within ten (10) days' of Contractor's receipt of retainage from the Owner for Subcontractor's Work, or such shorter time as may be required by law.

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

§ 11.1.10 Provided the Contractor has fulfilled its payment obligations under the Subcontract Documents, the Subcontractor shall defend and indemnify the Contractor and Owner from all loss, liability, damage, or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any of the Subcontractor's subcontractors, suppliers, or vendors of any tier. Upon receipt of notice of such lien claim or other claim for payment, the Contractor shall notify the Subcontractor. Without limiting the foregoing, if any claim or lien is filed for labor performed or materials used on or furnished to the Project by or on behalf of Subcontractor, or any of its sub-subcontractors, suppliers, or other vendors, where such claim or lien includes any amount (i) already paid to Subcontractor by Contractor; (ii) disputed by Contractor; and/or (iii) not part of the then current Subcontract Sum under the Subcontract, Subcontractor shall, within ten (10) calendar days after written demand from Contractor, cause any such claim or lien to be removed, which may include substituting a surety bond equal to or greater than 150% of the disputed amount for the property, Work, or other interest or asset encumbered. In the event Subcontractor shall fail to do so, Contractor is authorized to use whatever means it may deem appropriate to cause said lien or claim to be removed and the cost thereof, together with actual attorneys' fees, expert witness' fees, and related costs, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such claim or lien provided it causes the claim or lien to be removed promptly in advance and shall further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such claim or lien.

§ 11.2 Substantial Completion

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

§ 11.3 Final Payment

§ 11.3.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, Owner has accepted the Subcontractor's Work, the Architect has issued a certificate for payment covering the Subcontractor's completed Work, and the Contractor has received payment from the Owner.

§ 11.3.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

ARTICLE 12 INSURANCE AND BONDS

§ 12.1 Subcontractor's Required Insurance Coverage

§ 12.1.1 Subcontractor shall comply with the insurance requirements set forth in **Attachment A** to the Specific Project Agreement and the insurance requirements set forth in the Prime Contract.

§ 12.1.2 The risk of loss or damage to all Work covered by each Specific Project Agreement done at or away from the Project site, or in preparing or delivering assemblies, materials, or equipment, or any or all of the same, to the Project site, shall rest with the Subcontractor exclusively until the completed Work is accepted by Contractor.

§ 12.2 Subcontractor's Required Performance Bond and Payment Bond

§ 12.2.1 Subcontractor is required to provide performance and payment bonds as required in each Specific Project Agreement.

§ 12.2.2 If Subcontractor is required to provide performance and payment bonds under a Specific Project Agreement, Subcontractor shall provide both in an amount equal to one hundred percent (100%) of the Subcontract Sum. Each bond shall state clearly and with no ambiguity that it is issued for the purpose of guaranteeing payments and performances to which the Subcontractor has agreed. The bonds shall be executed by a corporate surety with an AM Best rating of A-VII or better, lawfully authorized to issue surety bonds in the jurisdiction, and shall be on the AIA Document A312 or other form as directed by Contractor. All original bond documents (e.g., bond form, power of attorney, etc.) in conformance with the requirements of this section must be submitted to and received by Contractor as a condition precedent to Subcontractor's right to access the site, begin the Subcontract Work, and to payment under the Subcontract. Subcontractor shall pay the premium on said bonds unless otherwise provided under the Subcontract.

§ 12.2.3 No change, alteration, or modification to or deviation from the Subcontract, including but not limited to any change, alteration, or modification to or deviation from the Subcontract Work and/or any of the Subcontract Documents, shall release or exonerate, in whole or in part, any bond or any surety on any bond given in connection with the Agreement, and no notice is required to be given to such surety of any such change, alteration, modification, or deviation.

ARTICLE 13 TEMPORARY FACILITIES, SERVICES, EQUIPMENT AND WORKING CONDITIONS

§ 13.1 See Attachment C to the Specific Project Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 The Contractor's representative for this Master Agreement:
(Name, address, email address and other information)

«Insert Name of BNB Project Executive
BNBuilders, Inc.
«2601 4th Avenue, Suite 350»
«Seattle, WA 98121»
«Phone: (206) 382-3443»

§ 14.3 The Subcontractor's representative for this Master Agreement:
(Name, address, email address and other information)

«Insert Name of Subcontractor PM»
«Insert Project Manager Email Address»

§ 14.3.1 The Subcontractor's representative shall not be changed without ten (10) days' prior notice to the Contractor and Contractor's prior written approval.

§ 14.4 Notice

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

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

§ 14.4.3 Not Used.

§ 14.5 **Construction and Interpretation.** In the event of any ambiguity within, under, or between, the Subcontract or any of the Subcontract Documents, such ambiguity shall not be construed against either Party as a rule of construction or interpretation.

§ 14.6 **Severability.** The invalidity of any provision of the Subcontract Documents shall not invalidate either this Master Agreement or the Subcontract or its remaining provisions. If it is determined that any provision of this Master Agreement or the Subcontract for a particular Project violates any law or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case, this Master Agreement and the Subcontract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Subcontract.

§ 14.7 **Digital Transmission Protocol.** Unless already provided for by the Prime Contract, the parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 14.8 **Attorney's Fees.** In the event the Parties become involved with each other in a formal dispute resolution proceeding, including litigation, arbitration, and/or appeal, arising out of the Subcontract, its performance, or any work on the Project, the prevailing party shall be paid, by the non-prevailing party, for its attorneys' fees, expert witness' fees, and other costs of suit incurred in participating in such proceedings. Unless judgment goes by default, the fees and costs shall not be computed in accordance with any court schedule but shall be such as to fully reimburse the prevailing Party for all such fees and costs incurred in good faith. In the event a matter is voluntarily non-suited, the defendant shall be considered the prevailing party for purposes of this Section 14.8.

§ 14.9 **DBE/MBE/WBE.** Subcontractor hereby acknowledges that it is thoroughly familiar with all DBE/MBE/WBE requirements pertaining to a Project under any Specific Project Agreement, if any. If the Subcontractor claims status as a DBE/MBE/WBE, the Subcontractor shall take all steps necessary and shall make all necessary records available to the Contractor and the Owner to assure that Subcontractor is in compliance with such requirements. In the event that any sub-subcontractor or supplier of the Subcontractor is designated as or is required to be a DBE/MBE/WBE, Subcontractor agrees to be responsible for ensuring that any such sub-subcontractor or supplier meets all applicable requirements. Subcontractor acknowledges that Contractor is relying upon Subcontractor's representations regarding the validity of Subcontractor's status, if any, as a DBE/MBE/WBE, and that misrepresentation of the status of Subcontractor or any of its sub-subcontractors or material suppliers is a material breach of this Master Agreement and grounds for immediate termination of any Specific Project Agreement or this Master Agreement, in which case, Subcontractor shall not be entitled to any compensation not already paid and shall be obligated to indemnify Contractor for all costs, losses, expenses, and damages Contractor may incur as a result.

§ 14.10 **Design Build Work.** To the extent that any portion of the Work under a Specific Project Agreement is designated as design-build, Subcontractor agrees, in addition to the provisions of Section 9.4 above, to the terms and Conditions of Attachment X.

§ 14.11 **Method of Execution; Mutual Execution Required.** This Master Agreement and any Specific Project Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts shall constitute one agreement. This Master Agreement and any Specific Project Agreement may also be executed and made binding through the use of signatures sent via facsimile and/or PDF through e-mail and whether digital or encrypted, which signatures shall be treated and effective as originals. In no case, however, shall this Agreement become effective unless and until executed by both Parties.

§ 14.12 **Retroactivity.** In the event Subcontractor performs any work on the Project prior to the effective date of the Subcontract, including any pre-construction services (whether or not under a separate agreement, which separate agreement shall be replaced and superseded by the Subcontract), all such work shall be governed by the terms and conditions of the Subcontract and shall be deemed to be a part of the Subcontract Work.

§ 14.13 **Division and Headings.** The division of these General Conditions into articles and sections and use of descriptive headings is for convenience of reference only and shall not affect the interpretation or construction of the Subcontract.

§ 14.14 **Non-Waiver; Remedies Cumulative.** Failure of Contractor to enforce any provision of the Subcontract shall not act to establish any course of dealing or performance or a waiver to enforcement of any provision at a later date. All rights and remedies provided to Contractor under the Subcontract are cumulative and non-exclusive, including of any other rights or remedies that may be available to Contractor, whether provided by law, equity, statute, regulation, code, ordinance, or otherwise.

ARTICLE 15 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 15.1 The Subcontract Documents that comprise the Master Subcontract Agreement, are enumerated in the sections below.

§ 15.1.1 The Specific Project Agreement and any documents listed therein.

- .1 This AIA Document A401™–2017, Standard Form of Agreement Between Contractor and Subcontractor, as amended by the Parties;
- .2 The Prime Contract between the Owner and The Prime Contract between the Owner and Contractor and the other documents and Contract Documents enumerated, referenced, incorporated into, made a part of, or attached thereto or therein;
- .3 Modifications to the Prime Contract;
- .4 Modifications to this Agreement;
- .5 State-Specific Rider – Refer to **Attachment F**
 - California Rider V1.2 to AIA A401-2017 Master Form Agreement Between Contractor and Subcontractor
 - Washington Rider V1.2 to AIA A401-2017 Master Form Agreement Between Contractor and Subcontractor
- .6 Other documents attached hereto or to the Specific Project Agreement:
 - Attachment “A” – Subcontract Insurance Requirements, dated *(See Project Agreement)*
 - Attachment “B” – Subcontractor Billing Information, dated *(See Project Agreement)*
 - Attachment “C” – Scope of Work (i.e., Supplemental Conditions), dated *(See Project Agreement)*
 - Attachment “C.1” – Specific Scope of Work, dated *(See Project Agreement)*
 - Attachment “D” – List of Contract Documents, dated *(See Project Agreement)*
 - Attachment “E” – Project Schedule, dated *(See Project Agreement)*
 - Attachment “F” – State-Specific Rider(s), dated TBD
 - Attachment “G” – Subcontractor HSE Requirements dated *(See Project Agreement)*
 - Attachment “H” – Payment & Performance Bonds Forms

This Master Subcontract Agreement is entered into as of the day and year first written above and shall expire 5 years from said date.

BNBuilders, Inc.

CONTRACTOR *(Signature)*

SUBCONTRACTOR *(Signature)*

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(Printed name)

(Printed name)

(Date)

(Date)

(Title)

(Title)

Contractor’s License No.: _____

State of Formation: _____

State Registration No.: _____

Contractor’s Tax ID No.: _____

This California Rider (“Rider”) is attached to and made part of the Master Subcontract Agreement between Contractor and Subcontractor (Gemini V1.3) as amended by the Parties (“Agreement”). In the event of any conflict, inconsistency, and/or ambiguity between the provisions of this Rider and the provisions of the Master Subcontract Agreement, or a Specific Project Agreement including all Subcontract Documents thereto, or within any of the same, the provisions of this Rider shall control; provided, however, if the parties execute a change order to the Master Subcontract Agreement that modifies the provisions of this Rider, the change order shall govern, with the latest issued change orders taking precedence over earlier issued change orders. Unless otherwise specified, all capitalized terms herein shall have the meaning set forth in the Master Subcontract Agreement.

1. Section 4.8 is hereby deleted and replaced in its entirety with the following:

§ 4.8 Indemnification

§ 4.8.1 To the fullest extent permitted by law, Subcontractor shall release, defend, indemnify, and hold harmless Contractor, Owner, any parties Contractor is required to indemnify in the Prime Contract, and the agents, representatives, directors, officers, managers, employees, consultants, volunteers, owners, affiliates, parents, and subsidiaries of any of them (each an “**Indemnified Party**,” and collectively, “**Indemnified Parties**”), for, from, and against all costs, claims, actions, causes of action, damages, liabilities, losses, liquidated damages, fines, penalties, and expenses, including without limitation, attorneys’ and expert fees in the defense of such claims or in the enforcement of Subcontractor’s indemnity obligations hereunder (collectively, “**Loss**”), arising out of, related to, or resulting from, or allegedly related to or arising out of:

- .1 any negligent or intentionally wrongful act or omission in the performance of the Work, or any breach of any provisions of the Subcontract Documents by, the Subcontractor, its subcontractors and suppliers, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable;
- .2 any determination by a court or agency that Subcontractor is not an independent contractor, or that Owner or Contractor is the employer or a joint employer of any employees or personnel of Subcontractor or its subcontractors;
- .3 any claim, action, suit or proceeding by the employees of Subcontractor or any of its subcontractors, including without limitation, workers’ compensation, unemployment, and wage-and-hour claims;
- .4 infringement of any patent rights arising out of Subcontractor’s Work; and
- .5 any violation or infraction by Subcontractor of any law, order, citation, rule, regulation, standard, ordinance or statute, including without limitation, those relating to the occupational health or safety of employees, or the use of Contractor’s or others’ equipment, hoists, elevators, or scaffolds.

Such obligations shall not be construed to negate, abridge, or reduce any other rights or obligations of indemnity or defense which would otherwise exist as to an Indemnified Party.

§ 4.8.2 With regard to the indemnity and defense obligations arising under Section 4.8, such obligations shall arise regardless of whether such Loss is caused in part by the concurrent or partial negligence or fault of an Indemnified Party; provided, however, Subcontractor’s obligations hereunder shall not apply to the extent (i) the Loss arises out of, pertains to, or relates to the active or sole negligence or willful misconduct of an Indemnified Party or defects in design furnished by any Indemnified Party, or (ii) the Loss does not arise out of, relate to, or is not connected with the scope of the Subcontractor’s Work under the Subcontract Documents. Any indemnity obligations shall not extend to design errors or omissions of Architect or other design professionals, unless such design services are performed by or for Subcontractor under design-build criteria or performance specifications.

§ 4.8.3 In claims against any Indemnified Parties by any employees of the Subcontractor (or any employees of its subcontractors, or employees of anyone for whom Subcontractor may be liable, directly or indirectly), Subcontractor’s indemnification obligations under Section 4.8.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Subcontractor (or its subcontractors or anyone for whom Subcontractor may be liable, directly or indirectly) under workers’ compensation acts, disability benefit

acts, or other employee benefit acts. For the purposes of the foregoing indemnification provision only, and to the fullest extent allowed by applicable law, Subcontractor specifically waives immunity it may be granted under any such worker's compensation, disability benefit acts or other employee benefit acts.

§ 4.8.4 Upon any tender by an Indemnitee to Subcontractor, Subcontractor shall timely comply with its defense obligations under Civil Code sections 2782 and 2782.05 (as applicable), including making an election to defend or pay the defense of Indemnitees. Subcontractor's election and defense obligations hereunder shall not limit the defense, indemnity, and/or additional insured obligations of the Subcontractor's insurance carriers to Contractor, Owner, or anyone who is to be named as an additional insured under the terms of the Subcontract Documents.

§ 4.8.5 To the fullest extent permitted by law, if Contractor's indemnity and/or defense obligation to Owner is broader in any respect than the provisions of this Section 4.8, the Subcontractor agrees to afford Owner and Contractor any such broader relief in addition to the relief afforded in this Section 4.8.

§ 4.8.6 The defense and indemnification obligations in this Section 4.8 shall survive the expiration or earlier termination of the Contract.

2. Section 4.11.1.1 is hereby added:

§ 4.11.1.1 Contractor has entered into the following labor agreements:

- .1 Los Angeles: Southwest Regional Council of Carpenters
- .2 San Diego: Southwest Regional Council of Carpenters and the Southwest California District Council of Laborers
- .3 San Francisco: United Brotherhood of Carpenters Northern California and Northern California District Council of Laborers June 2023 CEA agreement.

3. Section 6.5 is hereby added:

§ 6.5 This Agreement shall be governed by the laws of the State of California, without reference to its laws regarding choice of law.

4. Section 11.1.1 is hereby deleted and replaced in its entirety with the following:

§ 11.1.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Architect, and certificates for payment issued by the Architect, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Payments received by the Subcontractor for Work properly performed by its employees, subcontractors and suppliers shall be held by the Subcontractor in trust for those employees, subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Subcontractor for which payment was made to the Subcontractor by the Contractor. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Subcontractor. Nothing contained herein shall require money received by Contractor on account of Subcontractor to be placed in a separate account and not commingled with other money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

5. Section 11.1.1.1 is hereby added:

§ 11.1.1.1 Subcontractor acknowledges and agrees there is a risk that Owner, in breach of the Prime Contract, may make late payments or may, in certain circumstances such as bankruptcy, not make required payments to Contractor, which could disrupt or delay payments to Subcontractor. If Owner or another responsible party delays in making any payment to Contractor from which payment to Subcontractor is to be made, Contractor shall have a reasonable time to make payment to Subcontractor and Subcontractor agrees not to pursue an action against Contractor or its surety until Subcontractor has complied with all prerequisites for payment under this Subcontract and at least 150 days have passed after "Completion" (as that term is defined in Civil Code section 8180) of the

Work. In the event Contractor is still not paid by Owner at the expiration of the 150-day period from Completion, Subcontractor may commence an action against Contractor (and if applicable, the Contractor's surety on any payment bond, mechanics' lien, or stop payment notice release bond); provided however, if payment to Subcontractor is subject to dispute by Contractor or Owner, Subcontractor agrees any such action will be stayed for the lesser of: (a) the time Contractor and Subcontractor require to pursue to conclusion legal remedies against the Owner or other responsible party, as applicable, or (b) 12 months from Completion. This section is not intended to alter or limit Subcontractor's right to file a mechanic's lien, stop notice, or bond claim, to the extent such rights exist. If any portion of this section is determined to be void, invalid, or illegal, all other portions of this section shall remain in full force and effect.

6. 11.1.8 is hereby deleted and replaced in its entirety with the following:

§ 11.1.8 For each progress payment made prior to substantial completion of the Subcontractor's Work, the Contractor may withhold the following amounts as retainage from the payment otherwise due:

As determined by the Prime Contract. If no rate is set forth in the Prime Contract, the rate of retainage shall be ten percent (10%) or the maximum amount allowed by law, whichever is less.

Retainage shall be paid within ten (10) days' receipt of retainage from the Owner for Subcontractor's Work; provided, however, on public works projects, the time period for payment of amounts (if any) which Contractor is obligated by this Master Subcontract Agreement or any Specific Project Agreement to pay retention shall be within seven (7) days after receipt of retention by Contractor, subject to Contractor's right to withhold for the grounds set forth in this Master Subcontract Agreement or otherwise provided by law. Additionally, on such public works projects, the percentage of retention withheld (when there are no additional reasons for withholding) shall not exceed the percentage required to be withheld under Contractor's contract with the Owner.

7. Section 11.1.11 is hereby added:

§ 11.1.11 Wages, Fringe Benefits, Contributions and Payroll Reporting Requirements.

§ 11.1.11.1 Subcontractor is solely responsible for the proper payment of wages and fringe benefits to all persons working for Subcontractor or Subcontractor's subcontractors. For the purposes of this Section 11.1.11 (including all subsections), all references to "Subcontractor" shall include any entity or person contracted to provide services for the benefit of Subcontractor in performing this Subcontract, including without limitation, any parties contracting with Subcontractor's subcontractors.

§ 11.1.11.2 Subcontractor shall pay not less than the minimum wage and premium when applicable pursuant to Industrial Welfare Commission Wage Order No. 1—2001 and Labor Code sections 510, 511, 514, and 1197. Subcontractor may also be obligated to pay a higher wage and/or fringe or other benefit payments or contributions pursuant to a contractual agreement between an employee and the Subcontractor, or pursuant to a collective bargaining agreement.

§ 11.1.11.3 Subcontractor acknowledges that it has conducted its own independent investigation of the wage rates to be paid and whether its Work will be subject to California prevailing wage requirements, the requirements of the federal Davis-Bacon Act, or any similar laws, regulations, or contract requirements, and that it has not relied upon any statements or representations by Contractor with respect to such matters. If and when applicable, Subcontractor agrees to fully comply with California Labor Code sections 1720 et seq. (i.e., prevailing wage laws), and any applicable rules or regulations related thereto, and any amendments to any of the foregoing, and to pay the wage rates applicable to the Work. With respect to such projects, the provisions of California Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are attached hereto and incorporated herein by reference. On all such projects, Subcontractor shall submit certified payroll records to Contractor no later than three (3) working days after labor has been paid and further agrees to cooperate fully in any effort by Contractor to verify compliance with labor laws and regulations, including requirements under the Davis-Bacon Act or the California Labor Code. Such cooperation shall include, without limitation, furnishing copies and originals of records and providing access to employees or witnesses for interviews and statements. Further, as a condition precedent to final payment, Subcontractor agrees to provide an affidavit that complies with the terms of Labor Code section 1775(b)(4). Subcontractor agrees that the amounts set forth as the Subcontract Sum shall be deemed to be full

compensation for compliance with such laws, regulations, or requirements, including payment of all applicable wage rates, and that no additional compensation will be owed to Subcontractor in the event that Subcontractor is required thereunder to pay higher wages or incur additional costs that Subcontractor contends that it did not anticipate. Subcontractor further agrees to comply with Labor Code section 1775, subdivisions (b)(2), (3), and (4), and Labor Code section 1777.7, subdivision (e), with respect to each lower-tier subcontractor, including without limitation, monitoring each lower-tiered subcontractor's compliance with the prevailing wage laws and use of apprentices, taking necessary corrective action to halt or rectify any failure by a lower-tier subcontractor to pay the specified prevailing rate of wages or to employ the required number of apprentices, and obtaining the affidavit required by Labor Code sections 1775 and 1777.7 before making final payment to the lower-tier subcontractor.

§ 11.1.11.4 During the Project and for minimum of three (3) years after final completion of the Work, Subcontractor expressly agrees to maintain accurate, complete and detailed payroll records (including names, addresses, social security numbers, numbers of hours worked, salaries and wages, bonuses, commissions, health and pension plans, sick pay, pension pay, and deductions for all employees), which records shall include, without limitation, time cards, cancelled checks, cash receipts, pay stubs, wage statements, trust fund forms, books, documents, schedules, forms, reports, daily reports, receipts, or other evidences that reflect job assignments, work classifications, work schedules by days and hours, straight time and overtime hours worked for each day and week, the actual per diem wages paid to each journeyman, apprentice, or other employee, and the disbursement of funds (by way of cash, check, or in whatever form or manner) to any persons by job classification and/or skill, and any completed state and federal payroll forms, and any other specified records or documents referenced in Labor Code section 226, subdivision (a), Labor Code section 1174, subdivisions (b), (c), and (d), and/or California Code of Regulations section 16000 (collectively, "**Payroll Records**"). Subcontractor shall provide Contractor with verified Payroll Records for Subcontractor and any of Subcontractor's subcontractors within the time requested by Contractor.

§ 11.1.11.5 Without limiting any other requirements of this Subcontract (including under Section 11.1.11.3 above), Subcontractor shall submit to Contractor on a monthly basis (or within five (5) business days of Contractor's request from time to time) complete and accurate certified Payroll Records in a form acceptable to Contractor for each week when labor is performed on the Project. A "Statement of Non-Performance" shall be submitted to Contractor for any work week when labor is not performed. In addition, Subcontractor shall submit to Contractor, within five (5) business days of Contractor's request, a copy of a project-specific report of contributions paid to any applicable third-party trust fund, plan or program on any employee's behalf. The report shall include the identity of each employee, the last four digits of the employee's Social Security Number, hours worked, applicable total fringe benefit contribution rates per hour, total contributions owed per employee, and the total amount of fringe benefits or contributions paid during the specified work period for all employees. A copy of the check paid to the applicable third-party trust fund plan or program in the amount of total contributions that are due and owing or other satisfactory proof of payment shall be included with the report.

§ 11.1.11.6 For any public works project, in accordance with California Labor Code section 1777.5, subdivision (e), Subcontractor is responsible for maintaining and providing upon request from the Contractor, any documentation regarding Award Information. "Award Information" includes, but is not limited to, documentation relating to the following for Subcontractor and each of Subcontractor's subcontractors: (1) the project name; (2) name and address of the Subcontractor; (3) contractor with whom the Subcontractor is under contract; (4) anticipated start date; (5) project duration; (6) estimated journeymen and apprentice hours; (7) contact information for its subcontractors on the project; and (8) number of employees performing on the awarded project. Subcontractor shall provide Award Information for Subcontractor or any of Subcontractor's subcontractors to Contractor within the time requested by Contractor. For the purposes of this Section, "relating to" means documents that constitute, evidence, record, reflect, analyze, summarize, support, refute, or comment upon Award Information. Subcontractor shall maintain, and shall require Subcontractor's subcontractors to maintain, Award Information relating to any Specific Project Agreement for a minimum of four (4) years after completion of the work that is required by the Specific Project Agreement.

§ 11.1.11.7 Before starting work on the Project, Subcontractor must provide written confirmation that Subcontractor has neither failed to pay wages to any employee nor failed to make any fringe or other benefit payments or contributions on any project in the last three (3) years (with written verification by any union to which Subcontractor is signatory), otherwise Subcontractor must satisfactorily explain in writing the reason for

its failure to pay wages or make fringe or other benefit payments or contributions. At any time during the course of any Specific Project Agreement, Subcontractor shall provide Contractor with written notice of any claim made against it for failing to pay wages or make fringe or other benefit payments or contributions. The information required to be provided by this paragraph must be certified under penalty of perjury by either the owner or an officer or director of the Subcontractor.

§ 11.1.11.8 Subcontractor acknowledges Contractor's right to audit all records related to the Work under this Master Subcontract Agreement or any specific Project Agreement, including without limitation, Payroll Records and Award Information. Subcontractor grants to Contractor and its agents the right to inspect and audit all such records at any time during business hours after 24-hour notice.

§ 11.1.11.9 As a condition precedent to final payment, upon completion of its scope of work, Subcontractor shall furnish to Contractor Payroll Records for the Project, to the extent not already provided with each payment application or as otherwise described above, and permit Contractor or its representative to audit Subcontractor's books and records and provide documentation as may be required to assure accuracy of those Payroll Records. The purpose of the final audit, among other things, is to verify Subcontractor fulfilled its obligations to pay wage, fringe, or other benefit payments or contributions. Subcontractor shall also provide final written confirmation from any contract trust funds or third party owed fringe or other benefit payments or contributions on a wage claimant's behalf that Subcontractor made timely and correct contributions and payments. In addition, an owner, officer or director of Subcontractor must certify under penalty of perjury that Subcontractor has paid all wages on the Project. Subcontractor agrees that its failure to submit the documents required by this section or permit an audit of its Payroll Records will constitute grounds for withholding retention and any remaining contract balance.

§ 11.1.11.10 In addition to Contractor's ability to withhold payments as set forth elsewhere in the Subcontract Documents, it shall be deemed a material breach of this Subcontract and Contractor may withhold payments from Subcontractor due to Subcontractor's failure to comply with any requirements set forth in this Section 11.1.11, including without limitation:

- .1 if (i) Payroll Records from Subcontractor or from Subcontractor's subcontractors are not provided within the time requested by Contractor; (ii) Payroll Records provided are insufficient to determine if Subcontractor or Subcontractor's subcontractors properly and fully paid any persons; or (iii) Payroll Records provided show the potential or possibility that any persons employed by Subcontractor or Subcontractor's subcontractors have not been properly paid in accordance with the California Labor Code (including without limitation, Labor Code section 218.8) or the requirements of the Subcontract Documents;
- .2 if Contractor receives notice from the Division of Labor Standards Enforcement, a trust fund, joint labor management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978, or any other interested party about Subcontractor's (or its subcontractors') failure to pay wages and/or fringe benefits in accordance with the above referenced statutes, Wage Order 16-2001, an employment contract or agreement, or a collective bargaining agreement;
- .3 if Contractor receives notice of any claims related to labor requirements, including without limitation, requirements under the Davis-Bacon Act or the California Labor Code;
- .4 if Subcontractor fails to pay a wage claimant or a third party on a wage claimant's behalf in accordance with their agreement; or
- .5 to the extent Section 11.1.11.6 above applies, if (i) Award Information from Subcontractor or from Subcontractor's subcontractors is not provided within the time requested by Contractor, or (ii) Award Information provided is insufficient to determine if Subcontractor or Subcontractor's subcontractors properly and fully disclosed all estimated labor force employees and corresponding workhours, including but not limited to journeymen and apprentices.

§ 11.1.11.11 Subcontractor agrees to indemnify, hold harmless, and defend Contractor from any claims, complaints, withholdings, penalties, liquidated damages, interest, or any other legal matters to the extent caused in whole or in part by the failure by Subcontractor or any of its subcontractors to comply with this section or related to any debt owed to a wage claimant employed by Subcontractor or any lower tiered subcontractor operating under its direction or any debt owed to a third party on a wage claimant's behalf and for any violation of Industrial Welfare Commission Wage Order No. 16-2001 and/or any provision of the California Labor Code by Subcontractor or any subcontractor operating under its direction. Subcontractor

agrees to include similar defense and indemnification clauses in its contracts with subcontractors that specifically require subcontractors to defend and indemnify the Contractor.

8. The following sections are hereby added:

§ 14.15 Skilled and Trained Workforce. To the extent applicable to any Project, Subcontractor agrees to comply with all applicable skilled and trained workforce requirements, including under Public Contract Code sections 2600, et seq. This includes monthly reporting by Subcontractor and all of Subcontractor's subcontractors. Subcontractor further agrees that Contractor shall be entitled to withhold subcontract amounts consistent with Public Contract Code sections 2600, et seq. in the event that Subcontractor or any of its subcontractors fail to comply, in whole or in part, with applicable skilled and trained workforce requirements. Subcontractor agrees to provide Contractor with a sworn affidavit of compliance with all skilled and trained workforce requirements prior to Contractor's final payment to Subcontractor becoming due. Subcontractor shall be solely responsible for, and agrees to indemnify, hold harmless, and defend Contractor from any claims, complaints, withholdings, penalties, liquidated damages, interest, or any other legal matters to the extent caused in whole or in part by the failure by Subcontractor or any of its subcontractors to comply with any applicable skilled and trained workforce requirements.

§ 14.15 Labor Code Section 2781 Compliance. Subcontractor agrees it is an independent contractor and fits within the subcontractor exception provided for in Labor Code section 2781. Subcontractor further agrees it is the employer, for all purposes (including under the California Labor Code, the Unemployment Insurance Code, and the Industrial Welfare Commission Wage Orders), of all workers performing services for Subcontractor in connection with the Work, and Contractor will not in any way be liable as an employer of, or on account of, any of the employees of Subcontractor. Subcontractor further agrees to obtain and maintain all necessary permits and licenses (including without limitation, appropriate licensure from the Contractors State License Board), and conduct its Work in accordance with the scope of such licenses, and pay all wages, salaries, and other compensation, and taxes to or on behalf of Subcontractor's employees according to all existing or subsequently enacted laws, rules, or regulations. If requested by Contractor, Subcontractor shall provide a declaration of compliance in the form required by Contractor, demonstrating Subcontractor's status as an independent contractor in accordance with Labor Code section 2781.

§ 14.16 CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS STATE LICENSE BOARD, WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CA 95826.

§ 14.17 In-Use Off-Road Diesel Fueled Fleets. Subcontractor shall comply with the California Air Resources Board's In-Use Off-Road-Diesel Fueled Fleets Regulation, Title 13, California Code Regulations, Section 2449, including all amendments. Subcontractor and sub-subcontractors of any tier that utilizes vehicles or equipment that are governed by this regulation, shall provide the Contractor with their Certificate of Reported Compliance before the execution of this agreement, and annually thereafter through completion of the Work. Subcontractor and its sub-subcontractors of any tier shall comply with the idling limitations. Subcontractor shall use R99 or R100 Renewable Diesel for all vehicles as required by this regulation. Subcontractor shall defend and indemnify Contractor from any losses, costs, expenses, liabilities, and damages arising out of Subcontractor's noncompliance with this regulation.

END OF RIDER