

# DRAFT AIA® Document A401™ – 2017

## Standard Form of Agreement Between Contractor and Subcontractor (Gemini V1.2 – California and Washington)

MASTER SUBCONTRACT 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 4<sup>th</sup> 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»

Mailing Address:

«Insert 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»

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.

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.

**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.

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 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:

## TABLE OF ARTICLES

- 1 THE MASTER SUBCONTRACT AGREEMENT
- 2 MUTUAL RIGHTS AND RESPONSIBILITIES
- 3 CONTRACTOR
- 4 SUBCONTRACTOR
- 5 CHANGES IN THE WORK
- 6 CLAIMS AND DISPUTES
- 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT
- 8 THE WORK OF THIS SUBCONTRACT
- 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 10 SUBCONTRACT SUM
- 11 PAYMENTS
- 12 INSURANCE AND BONDS
- 13 TEMPORARY FACILITIES, SERVICES, EQUIPMENT AND WORKING CONDITIONS
- 14 MISCELLANEOUS PROVISIONS
- 15 ENUMERATION OF SUBCONTRACT DOCUMENTS

## ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The “Master Agreement” consists of (1) this Master Subcontract Agreement; (2) other documents listed in Article 15 of this Master Subcontract Agreement; and (3) Modifications to this Master Subcontract Agreement issued after execution of this Master Subcontract Agreement. The Subcontract Documents consist of (1) the Master Agreement, (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and other Contract Documents enumerated therein, (3) Modifications to the Prime Contract, whether issued before or after the execution of this Agreement, in accordance with the provisions of Article 5, and (4) the specific Project Agreement for each Project and exhibits, attachments, and documents referenced therein (each a “Specific Project Agreement”). These form the Subcontract Documents and are as fully a part of each separate Specific Project Agreement as if attached thereto 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.

§ 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 is a written amendment 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 In the event of a conflict, ambiguity, or inconsistency between or within any of the Subcontract Documents, the more burdensome, costly, and/or stringent provision upon Subcontractor shall govern.

## ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Subcontractor shall assume toward the Contractor all obligations and responsibilities that the Contractor, under the Prime Contract, assumes toward the Owner and the Architect, 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, under such documents, has against the Contractor, 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.

## 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 prompt 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, the Contractor shall provide the Subcontractor copies of the Contractor’s most recent updated construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor’s Work properly. Subcontractor is responsible to review the Contractor’s schedule and updates and is bound by the duration, sequences, and completion dates therein. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details. 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 documents. 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. If available, space will be allocated for Subcontractor use, as deemed necessary, by the Contractor’s Superintendent. If during the course of the

work the Contractor directs the Subcontractor to repeatedly relocate their facilities, Subcontractor will be entitled to reimbursement of direct costs necessary for that work, except as previously agreed upon or if such relocation is a direct result of not being able to complete the Work due to phasing and/or sequence of the 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 promptly make available to the Subcontractor information, including information received from the Owner, that affects the performance of this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

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

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

**§ 3.3.4** If hazardous materials or substances are being used on the site by the Contractor, a subcontractor, or anyone directly or indirectly employed by them (other than the Subcontractor), and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the 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 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 promptly 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, cooperate with Contractor by providing all relevant documents 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 Prime Contract work or the work of others on the Project, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default. Any liquidated damages for delay imposed by the Owner or Contractor shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable.

**§ 3.4.2** In connection with Claims by Contractor for the costs of services or materials provided due to the Subcontractor's failure to execute the Work, Contractor agrees to provide:

- .1 two (2) days' written notice prior to the Contractor providing services or materials, except in an emergency; and

- .2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth (15<sup>th</sup>) day of the month following the Contractor's providing such services or materials.

### § 3.5 Contractor's Remedies

If the Subcontractor defaults or neglects to carry out the Work in accordance with this 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 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.

## ARTICLE 4 SUBCONTRACTOR

### § 4.1 General

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

### § 4.2 Execution and Progress of the Work

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

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

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

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

**§ 4.2.5** The Subcontractor agrees that the Contractor and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the 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 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. The Subcontractor shall participate in the preparation of coordinated drawings as directed by the Contractor, 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 promptly submit Shop Drawings, Product Data, Samples, and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence (including a reasonable review and approval time of submitted materials both by the Contractor and Owner/Architect) as to 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, 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** The Subcontractor shall comply with Federal, state, and local tax laws; social security acts; unemployment compensation acts; and workers' compensation acts, insofar as applicable to the performance of this Subcontract.

#### **§ 4.5 Safety Precautions and Procedures**

**§ 4.5.1** The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract as required in **Attachment G**. The Subcontractor shall comply with safety measures, plans, or program initiated or adopted by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, for the safety of persons and property, in accordance with the requirements of the Prime Contract. The Subcontractor shall notify the Contractor within twenty-four (24) hours of an injury and/or near miss (an incident that could have caused injury) 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. Provided such relief is available under the Prime Contract, 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 indemnify and 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.

#### **§ 4.6 Cleaning Up**

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

**§ 4.6.2** As provided under Section 3.4.2, 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** The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly identified, approved and authorized, may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall provide satisfactory evidence as to the kind and quality of materials and equipment furnished or to be furnished. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Documents. The Subcontractor shall execute a written guaranty and warranty applicable to all phases of the Work in accordance with the Subcontract Documents and other applicable provisions of the Contract Documents pertaining to warranties and guarantees.

**§ 4.7.2** 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 guarantee period 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 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 its own cost and expense. If Subcontractor shall fail within such 2-day period to replace or correct improper, defective, or nonconforming Work promptly and completely, Contractor, at its option, may replace or correct the same. Subcontractor agrees to pay to Contractor all costs, expenses (including consultants' and attorneys' fees), liabilities and consequential damages incurred by Contractor in connection with said replacements or corrections, whether said replacements or corrections are removed, disposed of, and replaced by Subcontractor or Contractor or by others. The Subcontractor shall execute a written guaranty and warranty applicable to all phases of the Work in accordance with the Subcontract Documents and other applicable provisions of the Contract Documents pertaining to warranties and guarantees prior to and as a condition of final payment. The foregoing corrections period shall apply only to Subcontractor's obligation to correct the Subcontractor Work and shall not otherwise affect Contractor's rights or remedies for breach of any warranty or covenant by Subcontractor hereunder.

**§ 4.7.3** 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 Remedies for Nonpayment**

Not used.

#### **§ 4.10 Professional Services Provided by Subcontractor**

**§ 4.10.1** 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.

**§ 4.10.2** 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.

**§ 4.10.3** 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 Subcontractor shall make a written request for all performance and design criteria related to Subcontractor's Work.

**§ 4.10.4** 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 4.10.

**§ 4.10.5** The Subcontractor shall cause the professional services performed under this Section 4.10 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 4.10.

#### **§ 4.11 NATURE OF THE WORK**

**§ 4.11.1** 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 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.

**§ 4.11.2** Contractor is signatory to the Carpenters and Laborers trade unions. Subcontractors shall employ only union labor at the job-site for work normally performed or claimed by the above listed trade unions.

**§ 4.12** 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 will be required to review the written policy document and to acknowledge and agree to the policy as detailed in the writing. 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 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 Contractor may make changes in the Work by issuing Modifications. Upon receipt of a Modification by Owner to the Prime Contract issued subsequent to the execution of this Agreement, the Contractor shall promptly notify the Subcontractor of such Modification. Unless otherwise directed by the Contractor, the Subcontractor shall



not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

**§ 5.2** The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions, or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of any Specific Project Agreement, with the Subcontract Sum and the Subcontract Time adjusted accordingly.

**§ 5.3** If a condition or occurrence arises that Subcontractor believes gives rise to a change in the Subcontract Work, impacts Subcontractor's time for performance or the cost of the Subcontract Work, or could delay Subcontractor's 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 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. Subcontractor's failure to provide prompt notice to Contractor shall constitute an irrevocable waiver by Subcontractor of its right to a change order and/or claim based upon the condition or occurrence.

**§ 5.4** Within the shorter of (a) five (5) business days of Subcontractor's notice to Contractor for a change, or (b) two (2) working days preceding the time by which the Contractor shall 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. If additional documentation is requested, Subcontractor shall provide it. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

**§ 5.5** To ensure timely completion of the work, the Contractor may direct the Subcontractor to proceed with changes to the work prior to submitting a claim for adjustment to the Contract Sum, in which case the Subcontractor will proceed with said work, and submit a claim for adjustment to the Subcontract Sum within five (5) working days. All time and material authorizations for changes in the work must be signed on a daily basis or no later than 10:00 AM the following day by Contractor's authorized representative for verification of work hours and materials expended. A signature shall only constitute verification and shall not be construed as an approval for payment. Approval for verified time and material authorizations shall only come from the Project Manager. Any time and material work authorizations not signed by the Contractor shall be performed at the Subcontractor's risk.

**§ 5.6** Adjustments made to the Subcontract shall represent total compensation due in accordance with Article 5 accordingly. All costs arising out of the modified scope of work shall include, but no be limited to, all direct costs of materials, equipment, labor, all overhead and profit, insurance, bond, permits, applicable taxes, and all indirect costs and schedule revisions including, but not limited to, 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 charges and other indirect costs if any arising out of this modification, or out of the cumulative impact of this modification combined with other modifications.

## **ARTICLE 6 CLAIMS AND DISPUTES**

### **§ 6.1 Mediation**

**§ 6.1.1** Any claim arising out of or related to this Master Agreement or any Specific Project Agreement, except those waived under the terms of this Subcontract, shall be subject to mediation at Contractor's sole option as a condition precedent to binding dispute resolution.

**§ 6.1.2** On claims in excess of thirty-five thousand dollars (\$35,000) in the aggregate, the parties shall endeavor to resolve their claims by mediation, which, unless the parties mutually agree otherwise, shall be before a construction attorney licensed to practice law in the prevailing state, who is A-V rated in Martindale-Hubble and who possesses at least fifteen (15) years of experience in construction law. Request for mediation shall be filed in writing with the other party to this Master Agreement.

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

**§ 6.1.4** If the Subcontractor asserts a claim which involves, in whole or in part, acts or omissions which are the responsibility of the Owner or another party, including but not limited to claims for failure to pay, an extension of time, delay damages, or extra work, Contractor will present the Subcontractor's claim to the Owner or other responsible party. The Subcontractor shall cooperate fully with the Contractor in all steps taken in connection with prosecuting such a claim and shall hold harmless and reimburse the Contractor for all expense, including legal expense, incurred by Contractor which arise out of Contractor's submission of Subcontractor's claim to Owner or other responsible party as a condition of Contractor continuing to pursue such claim. Subcontractor shall be bound by any adjudication or award in any action or proceeding resolving such a claim.

**§ 6.1.5** Subcontractor shall not be entitled to and hereby 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, consequential damages, damages of any other type, lost profits, lost opportunity costs, or similar damages or costs, however denominated, as well as any other monetary relief, for any delay, disruption or suspension of the Work (collectively, "Impact Costs and Consequential Damages"), except to the extent of such sums as may be recovered on Subcontractor's account from Owner or any other third party. Subcontractor further waives any and all claims against Contractor for damages or additional compensation which is related to, caused or contributed to by delay and/or disruption of Subcontractor's performance. Without limiting Subcontractor's waiver of its right to compensation for Impact Costs and Consequential Damages above, if Subcontractor wishes to seek compensation for Impact Costs and Consequential Damages of any kind, or for any other increase in the Contract Sum, it must give the Contractor written notice no later than ten (10) days after the beginning of the underlying cause thereof, or such shorter period of time as may be provided by this Master Agreement or the Prime Contract or any Specific Project Agreement, and with sufficient time for the Contractor to comply with any notice requirements set forth in the Prime Contract. Failure to provide such written notice shall be a waiver of and a conclusive defense to any claim by Subcontractor and shall further bind the Subcontractor to the same consequences as those to which the Contractor is bound. The requirement to give such notice in no way shall be deemed to authorize or to furnish entitlement for recovery for Impact Costs and Consequential Damages or for any other form of relief which may be sought by Subcontractor. Subcontractor waives all special and/or consequential damages of any kind whatsoever and by whatever cause.

### **§ 6.2 Binding Dispute Resolution for Claims Involving Owner**

For any Claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall, at Contractor's sole option, be as set forth in Section 6.3. For any Claim involving the Owner, Contractor, at its sole option, may require the Subcontractor to comply with the dispute resolution procedure and same choice of law and venue provisions as set forth in the Prime Contract. In such event, Subcontractor shall remain liable to Contractor for Work provided under the Subcontract to the same extent and for the same duration that the Contractor may be held liable to Owner under the Prime Contract, and in no event prior to Contractor's release from responsibility to the Owner for Subcontractor's Work.

### **§ 6.3 Binding Dispute Resolution**

**§ 6.3.1** Any Claim subject to, but not resolved by, mediation shall be subject to arbitration at Contractor's sole option which, unless the parties mutually agree otherwise, shall be submitted in the manner herein specified. Arbitration shall be initiated by either party making written demand upon the other for arbitration. The arbitration demand shall list a complete statement of the items to be arbitrated and shall nominate an arbitrator. The arbitrator shall be an attorney licensed to practice law in the prevailing state and must be A-V rated in Martindale Hubble and shall possess at least fifteen (15) years' experience in construction law. If within ten (10) business days after such demand the other party has not designated a different arbitrator, the initially nominated arbitrator shall serve as arbitrator. If within ten (10) business days after such demand the other party designates a different arbitrator, the party shall within five (5) business days, either reach agreement on who shall serve as the arbitrator or if the parties cannot reach agreement within the five (5) business day time frame, the parties shall jointly petition the presiding judge of the County court in the county where Contractor maintains an office in the state where the Project is located, who shall designate the arbitrator who must be A-V rated. Unless otherwise agreed by the parties, the arbitration rules shall be the current prevailing Federal Rules of Civil Procedure, except that requests for admission shall not be allowed and the parties shall be limited to 15 interrogatories. The arbitration shall take place in in the city where Contractor maintains an office in the state where the Project is located and shall be held on thirty (30) days' notice by the arbitrator. The decision of the arbitrator shall be final and binding on the parties and judgment on such award may be entered by either party in a court of competent jurisdiction on the state. The party which is not the substantially prevailing party shall bear all costs and expenses of the arbitration.

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

**§ 6.3.3** Contractor, at its sole and absolute discretion, may consolidate an arbitration conducted under this Master Agreement or a Specific Project Agreement with any other arbitration or legal proceeding to which it is a party. Provided that for consolidation into an arbitration, (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 6.3.4** The Contractor, at its sole and absolute discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration or in any other legal proceeding, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.

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

**§ 6.4** This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 6.5** This Master Agreement and any Specific Project Agreement shall be governed by the laws as indicated in Attachment F.

#### **§ 6.6 Waiver of Claims for Consequential Damages**

Except with regard to Subcontractor's indemnity and defense obligations under the terms of the Subcontract Documents, the Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Subcontract, including without limitation, any consequential damages due to either party's termination in accordance with Article 7. Nothing contained herein shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of this Agreement. Notwithstanding the foregoing, if Subcontractor should default in performance of the Work described in Article 8 or in any Specific Project Agreement or should otherwise commit any act which causes delay to the Prime Contract work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default.

### **ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT**

#### **§ 7.1 Termination by the Contractor**

**7.1.1** If the Subcontractor repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a three-day period after receipt of electronic written notice to commence and continue correction of such default or neglect with diligence and promptness, as determined by Contractor in its sole discretion, the Contractor may, by electronic written notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract for that Specific Project and finish the Subcontractor's Work for that Specific Project by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor, such excess shall be paid to the Subcontractor less 25% of such unpaid balance to be withheld by Contractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor within five (5) days of notification by Contractor.

**§ 7.1.2** If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor may terminate this Master Agreement or any Specific Project Agreement for convenience upon electronic 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 electronic written notice and, unless indicated otherwise in such notice, the termination shall be effective immediately upon receipt.

§ 7.1.3 Upon receipt of written notice of termination, the Subcontractor shall

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

§ 7.1.4 In case of such termination for the Owner's or Contractor's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and reasonable demobilization costs actually incurred by reason of such termination, but not overhead and profit on the Work not executed.

## § 7.2 Suspension by the Contractor For Convenience

§ 7.2.1 The Contractor may, 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.

§ 7.2.2 An adjustment shall be made for increases in the Subcontract Time caused by suspension, delay or interruption. No adjustment shall be made to the extent that

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

## § 7.3 ASSIGNMENT OF THE SUBCONTRACT

§ 7.3.1 In the event of termination of the Prime Contract by the Owner, the Contractor may assign this Subcontract and/or any Specific Project Agreement to the Owner, with the Owner's agreement, subject to the provisions of the Prime Contract and to the prior rights of the surety, if any, obligated under bonds relating to the Prime Contract. In such event, the Owner shall assume the Contractor's rights and obligations under the Subcontract Documents.

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

## ARTICLE 8 THE WORK OF THIS SUBCONTRACT

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

## 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.

[  ] See **Attachment E Project Schedule** 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

§ 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).

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

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

## **ARTICLE 10 SUBCONTRACT SUM**

**§ 10.1** The Contractor shall pay the Subcontractor the Subcontract Sum in current funds for the Subcontractor's 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** It is agreed that as a condition precedent to any payment by Contractor to Subcontractor hereunder the Contractor must first receive payment from the Owner for the Work of Subcontractor for which payment is sought. Subcontractor specifically agrees that it is relying upon the Owner's credit (not the Contractor's) for payment, and Subcontractor specifically accepts the risk of non-payment by Owner. 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, sub-tier Subcontractors and suppliers shall be held by the Subcontractor in trust for those employees, sub-tier 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.

**§ 11.1.2** The Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor, and material, and agrees to furnish same from its subcontractors, suppliers and/or materialmen 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, until and unless such 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 an 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 materialmen 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. This schedule, 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 set forth in the sections below.

**§ 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;
- .2 150% of the amount, if any, for Work that remains uncorrected and for which the Contractor has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017 for a cause that is the fault of the Subcontractor;
- .3 150% of any amount for which the Contractor may withhold payment in whole or in part, as provided in Article 9 of AIA Document A201-2017, for a cause that is the fault for which the Contractor believes, in its sole and absolute discretion, relates to damage, defective work or fault of the Subcontractor, including without limitation, Work performed or defects discovered since the last payment application; and
- .4 Retainage withheld pursuant to Section 11.1.8 of this Agreement.

#### **§ 11.1.8 Retainage**

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 (10%) percent 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.

**§ 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. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

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

when required, the Subcontractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### **§ 11.2 Substantial Completion**

When the Subcontractor's Work or a designated portion thereof is substantially complete 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.

### **§ 11.4 Interest**

Payments due and unpaid under this Subcontract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing, or as defined in the Prime Contract, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## **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 Prime Contract.

**§ 12.1.2** All Work covered by each Specific Project Agreement done at the Project site or in preparing or delivering materials or equipment, or any or all of them, to the Project site, shall be at the risk of Subcontractor exclusively until the completed Work is accepted by Contractor.

### **§ 12.2 Subcontractor's Required Performance Bond and Payment Bond**

**§ 12.2.1** Subcontractor shall 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 agreed to 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.

**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)*

«BNBuilders, Inc.»  
«2601 4<sup>th</sup> 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 Sub Name»  
«Insert Sub Address»  
«City, State, Zip»  
«Phone:»

**§ 14.4 Notice**

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

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

§ 14.4.3 Notice in electronic format as set forth below or in the Prime Contract:

« Provided in each Specific Project Agreement »

§ 14.5 Neither the Contractor’s nor the Subcontractor’s representative for this Master Agreement or for any Specific Project Agreement shall be changed without ten (10) days’ prior notice to the other party.

§ 14.6 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 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 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 The substantially prevailing party in any legal action or arbitration shall be entitled to recover all cost of suit, including, but not limited to reasonable attorneys’ fees.

§ 14.9 Subcontractor hereby acknowledges that it is thoroughly familiar with all DBE/MBE/WBE requirements pertaining to a Project under any Specific Project Agreement. 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 subcontractor or supplier of the Subcontractor is designated as or is required to be a DBE/MBE/WBE, Subcontractor agrees to be responsible for insuring that any 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 the event of termination as the result of material misrepresentation of the status of the Subcontractor as a DBE/MBE/WBE, Subcontractor shall not be entitled to any compensation not already paid.

**§ 14.10 Design Build Work.** To the extent that any portion of the Work under a Specific Project Agreement is designated as design-build, including any portion of MEP work, Subcontractor agrees as follows.

**§ 14.10.1** Subcontractor acknowledges that that Contractor is relying upon Subcontractor to perform all necessary design services and coordination for Subcontractor's Work to comprise a completely operational system or systems, integrated with the other components of the Project, meeting the Owner's requirements, and in compliance with applicable codes and laws, including to the extent applicable, the ADA and FHA.

**§ 14.10.2** Subcontractor shall procure all design services in connection with its work from licensed, independent professionals. If the person providing the design services for Subcontractor is an independent design professional, the services shall be provided pursuant to a written agreement acceptable to Contractor and all such agreements shall include appropriate indemnities by such design professional toward Contractor and (if required by the Prime Contract) Owner and shall require appropriate amounts of professional liability insurance. Contractor reserves the right to object to the persons or employees that Subcontractor intends to utilize for design services, in which case Subcontractor at its sole cost shall utilize other persons, acceptable to Contractor, for such services.

**§ 14.10.3** Subcontractor shall prepare, for written approval by the Contractor and Owner, schematic design documents consisting of drawings illustrating the basic components of the design of the Subcontractor's Work and their relationship to other Project elements. Three printed sets and one reproducible set of these documents, at a minimum, shall be provided to Contractor. Following completion of the schematic design documents, Subcontractor shall update the preliminary schedule and estimate for the Contractor's review and approval. Approval by the Contractor, Owner, or Architect of any submittals by Subcontractor shall not relieve Subcontractor from its obligations under the Subcontract Documents, including its obligation to comply with applicable codes and law.

**§ 14.10.4** Based upon the approved schematic design documents, Subcontractor shall prepare, for approval by the Contractor and Owner, design development documents consisting of further definition of design elements, including drawings, outline specifications, and other documents to fix and describe the size and character of the Subcontractor's Work, including the relationship to other Project elements. Three printed sets and one reproducible set of these documents, at a minimum, shall be provided to Contractor. Following completion of the design development documents, Subcontractor shall review and update the schedule and estimate for Contractor's review and approval.

**§ 14.10.5** Based upon the approved design development documents, Subcontractor shall prepare for approval by Contractor, Owner, and governmental and/or other entities, including revisions necessary to secure needed approvals, construction documents setting forth in detail the requirements for construction of Subcontractor's Work. These documents shall consist of drawings and specifications that comply in all respects with codes, laws, regulations, and standards of good practice to be in effect as of the time that the work is to be performed. Three printed sets and one reproducible set of these documents, at a minimum, shall be provided to Contractor.

**§ 14.10.6** Subcontractor shall coordinate its Work with that of Contractor, other subcontractors, and all other persons at the Project site, to ensure that the completed Project provides a fully functional, operational system or systems that conform to Owners' design program.

**§ 14.10.7** Copies or originals of all data collected in relation to work associated with any Specific Project Agreement or, and all data and documents prepared in connection with the Project, shall be provided to Contractor and to Owner. Data collected, stored, and/or provided shall be in a form acceptable to Contractor. All data, designs, drawings, reports, drafts, work products, maps, records and other documents reproduced, prepared or caused to be prepared by Subcontractor pursuant to or in connection with any Specific Project Agreement or shall be the

exclusive property of Contractor, who shall own the copyright and all other intellectual property rights in connection therewith, and who shall be entitled to make full use thereof. All such documents shall be delivered and/or returned to Contractor upon request.

§ 14.11 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.

§ 14.12 Subcontractor shall maintain an acceptable prequalification with Contractor that is renewed on an annual basis.

## ARTICLE 15 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 15.1 Subcontract Documents, except for Modifications issued after execution of the Master Subcontract Agreement, are enumerated in the sections below.

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

§ 15.1.2 This executed AIA Document A401™-2017, Master Form of Agreement Between Contractor and Subcontractor.

§ 15.1.3 The Prime Contract, consisting of the Agreement between the Owner and the Contract.

§ 15.1.4 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

§ 15.1.5 Not used.

§ 15.1.6 Additional Documents to Gemini V1.2, if any, forming part of the Subcontract Documents:

- .1 Other documents attached hereto or to the Specific Project Agreement:
  - Attachment “A” – Insurance Requirements, dated *(See Project Agreement)*
  - Attachment “B” – Subcontractor Billing Information, dated *(See Project Agreement)*
  - Attachment “C” – Scope of Work, 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 XX/XX/XXXX
  - Attachment “G” – Subcontractor Health, Safety & Environmental Performance Requirements

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

**BNBuilders, Inc.**

**<Insert Subcontractor Legal Name>**

CONTRACTOR (Signature)

[Redacted Signature Area]

(Printed name and title)

SUBCONTRACTOR (Signature)

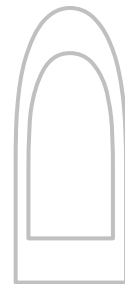
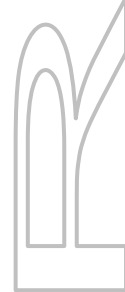
<< >><> >>

(Printed name and title)

Contractor's License No.: \_\_\_\_\_

Contractor's UBI No.: \_\_\_\_\_

Contractor's Tax ID No: \_\_\_\_\_



This California Rider (“Rider”) is attached to and made part of the Master Subcontract Agreement. In the event of any conflict, inconsistency, and/or ambiguity between the provisions of this Rider, 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. Unless otherwise specified, all capitalized terms herein shall have the meaning set forth in the Master Subcontract Agreement.

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.

Section 6.1.6 is hereby added to the Agreement:

**§ 6.1.6** 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.

Section 6.5 is hereby deleted and replaced in its entirety with the following:

**§ 6.5** This Master Subcontract Agreement and any Specific Project Agreement shall be governed by the laws of the State of California, without reference to its laws regarding choice of law. To the extent Contractor does not elect to submit any Claim to arbitration, the Parties agree the Claim shall be resolved by judicial reference pursuant to the provisions of California Code of Civil Procedure section 638 at a location within California to be selected by the Contractor, and Subcontractor waives any ability to object to an appointment of a referee. The referee shall be a retired California state court judge with experience in construction disputes. The parties shall not seek to appoint a referee that may be disqualified pursuant to California Code of Civil Procedure sections 641 or 641.2. If the parties are unable to agree upon a referee within ten (10) calendar days after the Contractor serves a written notice of intent for judicial reference upon Subcontractor, then the referee will be selected by the court in accordance with California Code of Civil Procedures section 640(b).

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.

The following section is added to the Agreement:

**§ 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.

The final sentence of Section 11.1.8 is hereby deleted and replaced with the following paragraph:

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.

The following sections are added to the Agreement:

**§ 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.

The following sections are added to the Agreement:

§ 14.12 **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.

**§ 14.13 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.

**§ 14.14** 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.