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## HUBERT CONSTRUCTION, LLC

### MASTER SUBCONTRACT AGREEMENT

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This Agreement made as of the \_\_\_\_ day of \_\_\_\_\_, in the year of 2008

**BETWEEN the Contractor:**

**Hubert Construction LLC**  
9055 Comprint Court, Suite 150  
Gaithersburg, Maryland 20877-1367  
Phone: (301) 721-9000  
Fax (301) 721-0736

**and the Subcontractor:**

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_

Subcontractor Federal Employer Identification Number: \_\_\_\_\_

Entity Type: \_\_\_\_ Corporation, \_\_\_\_ Limited Liability Company, \_\_\_\_ Partnership, \_\_\_\_ Individual, \_\_\_\_ Joint Venture

Formed in the State of \_\_\_\_\_

VENDOR ID: \_\_\_\_\_

**The Contractor and Subcontractor in consideration of the terms, covenants and conditions herein contained agree as set forth below:**

DM Classification:	Document Type: <b><u>Subcontract</u></b>	Subcontract Type: <b><u>Master Subcontract</u></b>
	Date: <u>See above date</u>	Vendor ID: _____

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**ARTICLE 1. PURPOSE AND APPLICABILITY**

- 1.1 This Master Subcontract Agreement (MSA) is being entered into by Contractor and Subcontractor with the understanding that will serve as a multi-project blanket master agreement for which Contractor engages Subcontractor to perform work so as to avoid negotiation and execution of separate agreements for each specific project. This agreement does not create an obligation that Contractor shall award any specific project to Subcontractor nor Subcontractor is required to perform work on any specific project. Contractor and Subcontractor shall execute this Master Subcontract Agreement as condition precedent to execution of any Subcontract Agreement Rider (SAR) for specific projects. Both parties acknowledge that this Master Subcontract Agreement will govern on all projects for which a Subcontract Agreement Rider is executed.
- 1.2 For each project awarded to Subcontractor, a Subcontract Agreement Rider will be executed by both parties. The Subcontract Agreement Rider will include all project specific terms and conditions such as Insurance Requirements, Project Information, Contract Document Listings (hereinafter called "Contract"), Scope of Work and Price, Surety Requirements, Forms, and any Special Provisions. The Subcontract Agreement Rider may modify and/or supplement the terms and conditions of the Master Subcontract Agreement.
- 1.3 This Master Subcontract Agreement and the Subcontract Agreement Rider may be amended only by written instrument executed by both Subcontractor and Contractor.
- 1.4 The Master Subcontract Agreement shall remain in effect until either party requests in writing, with thirty (30) days advance notice, the termination of this Agreement and such termination is acknowledged by the other party, which acknowledgement is not unreasonably delayed but not to exceed Thirty (30) calendar days. In the event of termination of this Agreement, the Agreement with all of its terms and conditions will remain in full force and effect for the completion and final payment on all ongoing projects for Subcontract Agreement Riders executed before receipt of notice of termination.

**ARTICLE 2. SUBCONTRACT DOCUMENTS**

- 2.1 The Subcontract Documents consist of the Master Subcontract Agreement, Subcontract Agreement Rider, Agreement between Owner and Contractor including the Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda, Exhibits issued prior to execution of the Contract, Request for Information, and other documents listed in the Agreement and Modifications issued after execution of the Subcontract Agreement Rider. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect or Owner.

**ARTICLE 3. SCOPE OF WORK**

- 3.1 Subcontractor shall perform all work and shall furnish all supervision, labor, materials, tools, equipment, supplies, scaffolding, transportation, hoisting, storage, plant/facilities, services, administration, shop drawings, samples, protection, temporary structures and facilities, mobilization, taxes, safety measures, notices and trade and business permits and all other things necessary to fully construct and complete in place the described work (hereafter called the "Work"), which Work, defined in this Master Subcontract Agreement, the Subcontract Agreement Rider, and Exhibits attached hereto, Subcontractor shall perform (a) in strict compliance with the Contract Documents and subsequently issued modifications and (b) to the reasonable satisfaction of Contractor and Owner.
- 3.2 Subcontractor represents it possesses requisite skill, expertise, and licensing (if applicable) to perform the Work called for herein and in an executed Subcontract Agreement Rider and agrees to comply with all applicable codes, laws, ordinances, rules and regulations of federal, state or local authorities.
- 3.3 Subcontractor shall perform the Work in a proper and expeditious manner and in accordance with the Contract Documents, Subcontract Agreement Rider, and Contractor's directives. Subcontractor shall not deviate from the plans and specifications except on written order from Contractor. Disputes between Subcontractor and Contractor, or legal proceedings arising from such disputes, shall not relieve Subcontractor of its obligations to perform the services as required under this Subcontract and to comply with Contractor's directives.

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- 3.4 Subcontractor represents and agrees that it will become familiar with the site of the Work and the provisions of each Subcontract Agreement Rider including the Contract Documents, plans and specifications, and will familiarize and satisfy itself as to the observable conditions and obstacles to be encountered, as well as the character, quality and quantities of work to be performed and materials to be furnished. Subcontractor further represents and agrees that it is prepared to execute the Work covered by the Subcontract Agreement Rider in every particular, without any extra charge whatsoever, except as may be specifically provided for elsewhere in the Contract Documents.
- 3.5 Subcontractor agrees that it will furnish a sufficient number of properly skilled workers, materials of the proper quantities and qualities, and that it will prosecute its work diligently and in a manner which will not delay Contractor or others. All work shall be performed by Subcontractor to reflect the highest standards of workmanship in the industry.
- 3.6 If, at any time, Subcontractor sees or believes that there is a conflict between plans and specifications which will affect guaranteed performance of any part of Subcontractor's Work, Subcontractor shall give written notice to Contractor and shall not proceed with the work until receipt of written directive. In the event of failure to so notify and comply, Subcontractor will be responsible for guaranteed performance of Subcontractor's Work.
- 3.7 Subcontractor shall pay for all materials furnished and work and labor performed under this Subcontract.

**ARTICLE 4. PROGRESS PAYMENTS.**

- 4.1 Contractor agrees to pay Subcontractor for the performance of the Work, as specified in each Subcontract Agreement Rider, a sum which includes all applicable taxes, subject to additions and deductions for changes agreed upon or otherwise determined as hereinafter provided.
- 4.2 Unless otherwise modified in the Subcontract Agreement Rider, progress payments will be made to Subcontractor in an amount equal to 90 percent of the value of the Work in place, computed on the basis of the price set forth in the Subcontract Agreement Rider, as approved by Contractor and Owner, of the Work performed hereunder, less the aggregate of previous payments.

If the Contract Documents allow Contractor progress payments for stored materials, progress payments shall also be due Subcontractor in the amount equal to 90 percent of the value of said stored materials which have been approved by Contractor and Owner.

Contractor will endeavor to pay Subcontractor for work performed within the lesser of seven (7) business days of being paid by the Owner or within sixty (60) days of the end of the month in which work was performed or materials were supplied, provided, however, that the Owner is not withholding payment due to disputes, inequities, or non-performance of the Subcontractor and Subcontractor's requisition was provided timely and in accordance with this article.

Should payments not be received according to the terms of this article, Subcontractor is within his rights to remove all manpower and equipment from the project until payment is made in full on all outstanding invoices. Subcontractor may pursue any and all mechanic's lien options to protect his payment rights.

- 4.3 Subcontractor shall submit for Contractor approval within fifteen (15) days of executing a Subcontract Agreement Rider a complete itemized breakdown (Schedule of Values) of the Subcontract price (showing the amount included therein in each principal category of Work) and which breakdown shall be the basis for establishing value of Work completed for each monthly progress payment. To the fullest extent practical, the values shall be supported by subcontracts and purchase orders of the Subcontractor and shall provide all supporting data reasonably requested by Contractor. Each Change Order which increases or decreases the Subcontract Agreement Rider amount shall be accounted for as a separate line item on the Schedule of Values. Each Application for Payment shall report the status of each Change Order in addition to the original Schedule of Values. Subcontractor shall also submit a listing of sub-subcontractors, suppliers, and other vendors with amounts that it will use on a project. Subcontractor shall also provide a breakdown of the labor hours needed for each of the Subcontractor's activities for use by the Contractor in scheduling the project. In the event Contractor disapproves of said breakdown, Contractor shall establish a reasonable breakdown, which shall serve as the basis for partial payments.

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- 4.4 Requests for progress payments shall be on Contractor provided forms and must be received by Contractor no later than the 20th day of the month for work projected through the last day of the current month. Should the 20th day not occur on a business day, Subcontractor's applications for payment are due the preceding business day. Subcontractor shall submit, upon Contractor's demand, proof of payment for labor, material and services used by Subcontractor and previously paid for by Contractor before any payment is due; and, Subcontractor shall submit to Contractor monthly releases of liens (either conditional, unconditional, or both) for prior payments, including monthly releases of liens from Subcontractor's subcontractors and suppliers, before any payment is due. Subcontractor shall furnish all trade and business permits, guarantees, warranties, operation and maintenance manuals, as-builts, and other documents required in the Contract Documents for Subcontractor's Work, including complete and final release of liens, as a condition for final payment.
- 4.5 In the event the Subcontractor does not submit to the Contractor such Application for Payment by the 20<sup>th</sup> of the month, Contractor may at its option, either: (i) include the Application for Payment in its next Application for Payment to the Owner or (ii) include in its Application for Payment to Owner for Work performed during the month such amount as it may deem proper for the work of the Subcontractor for the month and the Subcontractor agrees to accept such approved portion thereof in lieu of any monthly payment based upon Subcontractor's estimate.
- 4.6 Subcontractor shall insure that all its employees, subcontractors and suppliers, at all times, are paid all amounts due in connection with the performance of the Subcontract Agreement Rider. After the first progress payment hereunder, Contractor shall have the right to withhold all or any portion of any progress payments until Subcontractor submits evidence satisfactory to Contractor that all amounts owed in connection with performance of a Subcontract Agreement Rider have been paid through the date of the latest invoice paid by the Contractor to the Subcontractor, with the exception of any unpaid items, unapproved change orders and retention paid. Further, Subcontractor agrees that Contractor, after its receipt of written demand for payment from creditors of Subcontractor, notice to Subcontractor, and Subcontractor's failure to cure same within five (5) business days thereafter, may pay all persons who have not been paid, and that such amounts paid on behalf of Subcontractor shall be deducted from any progress or final payment(s) due to Subcontractor.
- 4.7 Contractor may deduct from any amounts due or to become due to Subcontractor any sum or sums owed by Subcontractor to Contractor on any project or under any Subcontract Agreement Rider; and, in the event of any breach by Subcontractor of any provision or obligation of this Master Subcontract Agreement or Subcontract Agreement Rider, or in the event of the assertion by other parties of any claim or lien against Contractor, its surety, Owner or the premises arising out of Subcontractor's performance of this Master Subcontract Agreement or any Subcontract Agreement Rider, Contractor shall have the right to retain out of any payments due or to become due to Subcontractor up to 150% of the amount sufficient to fully protect Contractor and Owner from any and all loss, damage or expense therefrom, until the situation has been satisfactorily remedied or adjusted by Subcontractor. Appropriate adjustments to withholdings shall be made when the exact amounts owed hereunder are determined.
- 4.8 No progress payment to Subcontractor shall operate as approval or acceptance of the Work furnished hereunder, in whole or in part. Progress payments are precedent upon the proper and approved receipt of Certificate of Insurance for the project, Payment and Performance Bonds, if required, properly executed Master Subcontract Agreement and properly executed Subcontract Agreement Rider, and partial/final release of liens. A non-refundable charge of \$250.00 per joint check agreement will be assessed to Subcontractors requiring joint payment.
- 4.9 In the event that Contractor makes payments to Subcontractor without receipt of or demand for proof of payment by Subcontractor, releases of liens, or the satisfaction of any other condition precedent to payment, it is agreed that any such circumstance shall not constitute nor be evidence of any waiver or estoppel, and Subcontractor agrees that it will not rely upon such a circumstance to conclude that Contractor does not intend to require future compliance with such conditions precedent to payment.

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- 4.10 All material and work covered by progress payments shall become the property of Contractor, or, if the Contract Documents so provide, the property of Owner; however, this provision shall not relieve Subcontractor from the sole responsibility and liability for all Work and materials upon which payments have been made until final acceptance thereof by Owner, and such materials and Work shall remain in the care, custody and control of Subcontractor and stored at Subcontractor's risk. Subcontractor shall not be liable for any work or materials damaged by the Contractor, Owner or any of their respective agents.
- 4.11 Contractor may implement an electronic internet based billing and payment management system so as to expedite the billing and payment process on a Project by Project basis and Subcontractor shall be required to participate in the system. Applications for Payment and all supporting documents (including but not limited to lien waivers, sworn statements, and related documentation required herein) shall be in electronic format and shall be submitted to Contractor using an electronic internet based payment management system proscribed by Contractor. Subcontractor shall be responsible for the fees and costs owed associated with Subcontractor's use of the electronic internet based payment management system. Fees shall range from \$5.00 to \$50.00 per monthly payment based on the size of the payment and shall be deducted from the monthly payment due to Subcontractor by the third party Service Provider.
- 4.12 Subcontractor shall submit on a monthly basis any changes to the listing and/or amounts of sub-subcontractors, suppliers, and other vendors that it uses on a project.

**ARTICLE 5 FINAL PAYMENT**

- 5.1 Upon final approval and acceptance of Subcontractor's Work by Contractor and Owner, and Subcontractor's compliance with all Subcontract Agreement Rider obligations, Contractor will make final payment to Subcontractor of the balance due to it under a Subcontract Agreement Rider within the lesser of seven (7) business days of being paid by the Owner or within sixty (60) days of the end of the month in which project is completed., provided, however, that the Owner is not withholding payment due to disputes, inequities, or non-performance of the Subcontractor and Subcontractor's requisition was provided timely and in accordance with this article.

Before any final payment is due, Subcontractor shall furnish Contract guarantees, warranties, instruction manuals, as-builts, and all other documents required by the Contract Documents for Subcontractor's Work, including releases and waivers of liens from Subcontractor and all its subcontractors and suppliers (if required by Owner) as a condition precedent for payments. If at any time prior to final payment hereunder Owner reduces the amount of retainage withheld from Contractor, Contractor with the consent of Subcontractor's surety, if any, may, depending on satisfactory performance by Subcontractor, but is not obligated to reduce accordingly the retained percentage withheld from Subcontractor.

- 5.2 If subcontractor fails to submit a final requisition within sixty (60) days after substantial completion of their work at the project, Subcontractor forfeits its rights to additional claims and final payment on the project.

**ARTICLE 6. BONDING.**

- 6.1 Subcontractor is to provide evidence of Bondability on all Subcontract Agreement Riders exceeding \$250,000. The following trades must provide evidence of Bondability regardless of amount: Masonry, Glass, Roof, Mechanical, Sprinkler, Plumbing, and Electrical whether or not the Contract Documents require bonding of subcontractor.
- 6.2 If required by the Subcontract Agreement Rider, Subcontractor shall furnish performance and payment bonds within ten (days) after execution of the Subcontract Agreement Rider on the form satisfactory (including the right of Contractor to finish the work) from a bonding company acceptable to Contractor for 100% of the Subcontract value as stated in the Subcontract Agreement Rider. The cost of Subcontractor's bonds shall be included in the Subcontract Agreement Rider amount. If bonds are required, Subcontractor shall provide the bonds required by this Article prior to the commencement of its Work and as a condition of payment. The bonding company must be licensed to do business in the state of the Project. The bonding company must be listed in the most recent Federal Register with underwriting limitations greater than the value of the bonds, and must be rated "A -VII" or better by A.M. Best. Subcontractor to issue dual-oblige bonds when so required by the Owner or Lending Institution providing the financing for the project.

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- 6.3 If the subcontractor can not obtain a bond, either prior to award or after award, then one or more (as determined by Contractor) of the following conditions must be met or Subcontractor shall be deemed to be in default of this agreement:
- .1 Joint checks will be made for all vendors over \$5,000.00
  - .2 Letter of Credit must be executed by Subcontractor in a form satisfactory to Contractor.
  - .3 Personal Guaranties will be required of the Subcontractor company owners. Signed financial statements of the guarantors must be submitted for review. These statements will be handled as confidential information and will be used to assist Contractor in determining if the financial strength of the guarantors.
  - .4 If the above conditions are not met, Contractor has the right to not award the project to the Subcontractor or Terminate for Default the Subcontract Agreement Rider for that project.

**ARTICLE 7. INSURANCE REQUIREMENTS.**

- 7.1 On a per project basis and before commencing any Work and throughout the Work until completion and final acceptance thereof by Owner, Subcontractor shall obtain and continuously maintain, at its expense, at least the insurance coverage specified by the applicable Subcontract Agreement Rider, all from companies and in form and substance acceptable to Contractor but no less than a "A-VII" A.M. Best Rating insurance company lawfully authorized to do business within the State in which the Project is located.
- 7.2 As a condition to any payment for the Work on any project, Subcontractor shall furnish a certificate, satisfactory to Contractor, from each insurance company showing the required insurance to be in force and stating that the insurance will not be canceled or changed except upon at least thirty (30) days written notice thereof to Contractor or as otherwise required by the Contract Documents. All policies and coverage's required by the applicable Subcontract Agreement Rider shall be written in the name of, and all certificates shall name, Contractor, Owner, and other parties designated by Owner as additional insured's per project as specified in the Subcontract Agreement Rider.
- 7.3 Such insurance shall protect Contractor and Owner from claims set forth below which may arise out of or result from Subcontractor's operations under the Master Subcontract Agreement or the Subcontract Agreement Rider, whether on-site or off-site, and for which Subcontractor may be legally liable, whether such operations are by Subcontractor or by any of its subcontractors or suppliers or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
- .1 claims under workers' compensation, disability benefits and other similar employee benefit acts including private entities performing work at the site and exempt from the coverage on account of the number or employees or occupation, which entities shall maintain voluntary compensation coverage pursuant to the statutory requirements of the State within which the Project is located for the duration of the Project;
  - .2 claims for damages because of bodily injury, occupational sickness, disease, or death of Subcontractor's employees or persons or entities excluded by statute from the requirements of Article 7 but required by Contract Documents to provide the insurance which entities shall maintain Employers' Liability coverage at the specified limits for the duration of the Project;
  - .3 claims for damages because of bodily injury, occupational or other sickness, disease, or death of any person other than Subcontractor's employees;
  - .4 claims for damages insured by personal injury liability coverage including libel, slander, false arrest, wrongful detention and malicious prosecution, which are sustained (1) by any person as the result of an offense directly or indirectly related to the employment of such person by Subcontractor, or (2) by any other person for whose acts Contractor may be liable;
  - .5 claims for damages, other than to the Work itself, because of physical injury to or destruction of tangible property, including loss of use resulting therefrom;

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- .6 claims for bodily injury or property damage arising out of completed operations for which coverage will be maintained for two (2) years after final payment and acceptance of the Project. Coverage will apply to the goods, products, materials, or equipment used or installed under the Contract;
- .7 claims involving contractual liability insurance applicable to meet, to the fullest extent possible, Contractor's indemnification obligations under Article 8; and
- .8 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of any owned, hired, or non-owned motor vehicle.
- 7.4 Notice to Proceed will not be issued and Subcontractor will not be authorized to commence Work until Contractor has obtained all of the minimum amounts of insurance required by this Article and such insurance has been approved by Contractor and Owner. Certificates of insurance acceptable to Contractor shall be filed with Contractor prior to commencement of Subcontractor's Work. If any of the foregoing insurance coverage's are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by Subcontractor with reasonable promptness according to Subcontractor's information and belief. Subcontractor shall not allow any of its subcontractors to commence work on sub-subcontracts until the same insurances have been obtained by Subcontractor for all sub-subcontractors and have been approved by Contractor. Subcontractor shall obtain from each sub-subcontractor, and file with Contractor, duly executed certificates of all required insurance. If required by Contractor, Subcontractor shall furnish Contractor with certified copies of each policy required by Subcontractor.
- 7.5 Subcontractor shall neither cause any insurance to be canceled nor permit any insurance to lapse during the execution of the Work. Coverage's whether written on an occurrence or claims made basis, excepting completed operations, shall be maintained without interruption from date of commencement of the Work until date of final payment and acceptance of the Project. Completed Operations coverage will be maintained for two (2) years thereafter. All insurance policies required hereunder shall include the following provisions: "It is agreed that this policy is not subject to cancellation, non-renewal, non-payment of premium, material change or reduction in coverage until thirty (30) calendar days after written notice (as evidenced by return receipt of registered or certified letter) has been received by Contractor." Certificates of Insurance shall contain information identifying the locations and operations for which the insurance applies, the expiration date, and the above-mentioned notice of cancellation or modification clause. Policies may not be canceled without the Subcontractor first having provided adequate substitution before cancellation.
- 7.6 If Contractor is damaged by the failure of Subcontractor or its subcontractors to maintain the specified insurance then Subcontractor shall bear all costs attributable thereto.
- 7.7 In the event Subcontractor fails to maintain any insurance required under the Contract Documents, Contractor may, but shall not be obligated to, purchase and maintain such insurance on Subcontractor's behalf and shall be reimbursed by Subcontractor for the cost thereof.
- 7.8 Contractual and other liability insurance provided under this Subcontract shall not contain a supervision, inspection, or engineering services exclusion that would preclude liability coverage for Owner due to supervision and/or inspection of the Project.
- 7.9 Waivers of Subrogation: Subcontractor and its respective insurance companies waive all rights against (1) Contractor; (2) Owner, and (3) the Architect, and all of the Contractor's, Owner's, and Architect's directors, officers, employees, agents, servants, and contractors for any claims, suits, losses or damages covered by any and all of the policies which are required to be purchased and maintained under this Article of the Subcontract (with the exception of Commercial Automobile Liability). Subcontractor, as appropriate, shall require of its subcontractors and suppliers, and directors, officers, employees, agents, and servants of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. All policies shall provide such waivers of subrogation by endorsement or by an otherwise acceptable form. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did

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not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged, and the waiver of subrogation shall apply only to the extent of actual payment of insurance proceeds.

- 7.10 No acceptance and/or approval of any insurance by Contractor shall be construed as relieving or excusing Subcontractor, or its Surety, or its bonds, from any liability or obligation imposed upon any or all of them by the provisions of the Subcontract or Contract Documents.
- 7.11 Specific Insurance limits and requirements will be specified in each Subcontract Agreement Rider for each project.

**ARTICLE 8. SUBCONTRACTOR'S LIABILITY; INDEMNITY.**

- 8.1 Subcontractor hereby assumes the entire responsibility and liability for all Work, except such work and materials which are damaged by Owner, Contractor or any of their respective agents, supervision, labor and materials provided hereunder, whether or not erected in place, and for all plant, scaffolding, tools, equipment, supplies and other things provided by Subcontractor until final acceptance of the Work by Owner. In the event of any loss, damage, or destruction thereof from any cause, Subcontractor shall be liable therefore, and shall repair, rebuild and make good said loss, damage or destruction at Subcontractor's cost.
- 8.2 Subcontractor shall be liable to Contractor for all costs Contractor incurs as a result of Subcontractor's failure to perform this Subcontract in accordance with its terms. Subcontractor's failure to perform shall include the failure of its subcontractors and/or suppliers of any tier to perform. Subcontractor's liability shall include, but not be limited to (1) damages and other delay costs payable by Contractor to Owner; (2) Contractor's increased costs of performance, such as extended overhead and increased performance costs resulting from Subcontractor-caused delays or improper Subcontractor Work; (3) warranty and rework costs; (4) liability to third parties; (5) excess costs; and (6) attorneys' fees and related costs.
- 8.3 To the full extent permitted by law, Subcontractor agrees to defend, indemnify and hold harmless (a) Contractor and Owner, (b) as well as any other parties which Contractor is required under the Contract Documents to defend, indemnify and hold harmless, and (c) their directors, officers, employees, agents, and servants, from and against any and all loss, direct or consequential damage, cost, expense (including attorneys' fees), claim or liability (including attorneys' fees), attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of property (including loss of use thereof), caused by, arising out of, resulting from, or occurring in whole or in part in connection with the performance of the Work by Subcontractor, its subcontractors and suppliers, or their directors, officers, employees, agents, or servants, or any other party for whom Subcontractor is responsible, whether or not caused in part by act or failure to act, the active or passive negligence, breach of this Subcontract, or other fault of a party indemnified hereunder; provided, however, Subcontractor's duty hereunder shall not arise if such injury, sickness, disease, death, damage, or damage to or destruction of property is caused by the sole negligence of Contractor or Owner. Subcontractor's obligation hereunder shall not be limited by the provisions of any worker's compensation law or similar act. Subcontractor's obligation is independent from, and is not limited in any manner by, Subcontractor's insurance coverage. Subcontractor's obligations under this Article shall be in addition to any indemnity liability imposed by the Contract Documents.
- 8.4 In the event that Subcontractor or any of its directors, officers, employees, agents, servants, subcontractors, or suppliers utilize any machinery, equipment, tools, scaffolding, hoists, lifts or similar items belonging to or under the control of Contractor, Subcontractor shall be liable to Contractor for any loss or damage (including personal injury or death) which may arise from such use, except where such loss or damage shall be due solely to the negligence of Contractor employees operating Contractor-owned or Contractor-leased equipment.
- 8.5 Subcontractor's assumption of liability is independent of, and not limited in any manner by, Subcontractor's insurance coverage obtained pursuant to Article 7 – Insurance Requirements or otherwise. All amounts owed by Subcontractor to Contractor as a result of the liability provisions of this Subcontract shall be paid upon demand.

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**ARTICLE 9. PERMITS, LICENSES, FEES AND TAXES.**

- 9.1 Subcontractor shall be responsible for obtaining and paying for all trade permits as required, business licenses and official inspections as required, necessary to perform its Work, including any increase therein, if any, during the life of the Subcontractor Agreement Rider. The Building and Site Permits will be obtained by others.
- 9.2 Contractor or Subcontractor may be under obligation for the payment of local, state or federal taxes on the labor or materials or both, or the transportation of either or both, required to be furnished under any Subcontract Agreement Riders, by virtue of existing or known future legislation, whatever be the name or designation applied to such taxing enactment. It is the intention of the parties hereto that all such taxes applicable to Subcontractor's Work shall be assumed and paid by Subcontractor irrespective of any existing or known future law which may require the payment of said taxes by Contractor, it being expressly understood that Subcontractor hereby agrees to and does indemnify Contractor and Owner against any and all loss and liability arising out of the requirement for the payment of such taxes. The term "materials" shall include equipment rentals, trucking, or any item not specifically mentioned herein on which such taxes are payable.

**ARTICLE 10. SUBCONTRACTOR OBLIGATIONS.**

- 10.1 Coordination of the Work; Inconsistencies and Omissions - Subcontractor shall coordinate its Work with all other trades including providing to other trades affected, as required, all necessary templates, patterns, setting and placement plans, shop details, equipment criteria, designs, lists of components, apparatuses, accessories, attachment devices and other related requirements. Subcontractor shall check all work performed by others necessary to "receive" Subcontractor's Work. Should the proper and accurate performance of the Work depend upon the proper and accurate performance of other work not covered by the Subcontract Agreement Rider, the Subcontractor shall carefully visually examine such other work, and determine whether it is in fit, ready, and suitable condition for the proper and accurate performance of the Subcontractor's Work and report promptly any such improper conditions and/or defects in writing to the Contractor and allow Contractor a reasonable time to have such improper conditions defects remedied. Failure to give notice of any discrepancy shall relieve Contractor of any responsibility therefore. Subcontractor shall be responsible for all field measurements and shall check elevations, grades, and dimensions to insure proper fitting of its Work. It shall not be Contractor's obligation to discover any mistakes, errors, omissions, or deviations from the Contract requirements in the Contract Documents or Subcontract, and Owner's final approval of drawings made by Subcontractor shall not relieve Subcontractor from responsibility for unauthorized changes, deviations, or omissions, or for errors of any sort, in its drawings. Subcontractor is solely responsible for correcting, repairing or replacing any non-conforming work.
- 10.2 Protecting The Work; Subcontractor Liability For Damage - Subcontractor shall seal or encase all openings created by its operations. In the event of freezing weather, Subcontractor shall be responsible to drain, insulate, and/or take all steps necessary to protect it's Work from damage. Any and all damage caused by failure to take such precautionary measures, either to Subcontractor's Work or to the work of others, will be the responsibility of said Subcontractor.
- 10.3 Shop Drawings; Samples; Submittals - Notwithstanding the dimensions given on the Plans, Specifications and other Contract Documents, it shall be the obligation and responsibility of the Subcontractor to take such measurements as will insure the proper matching and fitting of the Work. Subcontractor shall deliver to Contractor copies of shop drawings, cuts, samples and material lists required by Contractor or the Contract Documents and in accordance with the Contract Documents within sufficient time so as not to delay performance of the Project or within sufficient time for Contractor to submit the same within the time stated in the Contract Documents, whichever is earlier. All materials shall be submitted to the Architect and/or Owner for approval and acceptance prior to any installation. All deviations from the Contract Documents must be noted clearly on the submittals, and by separate cover letter Subcontractor shall state reasons for all such deviations and refer to the applicable Contract provision. All re-submittals shall be prepared and subsequently submitted with reasonable promptness (but no longer than ten (10) days in any event), in such sequence and at appropriate intervals as required by the conditions of the Work, so as not to delay said Work. All shop drawings required for and associated with approved change order work shall be submitted at least five (5) days earlier than the time allowed by the Contract Documents for Contractor to submit its proposal to Owner so as not to delay the Work. In any event, Subcontractor shall submit its proposal for changes no more than ten (10) days from the notice of change order proposed by Owner. Contractor review of shop drawings, cuts, samples and material lists is only for the convenience of Owner in

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verifying compliance with the Contract Documents. Contractor review shall not be construed as a complete check nor shall it relieve Subcontractor from responsibility for errors of any sort in shop drawings, cuts, samples and material lists. Review and/or approval of shop drawings by Contractor, Architect, Engineers, and/or Owner shall not relieve Subcontractor of its obligations to perform the Work in strict accordance with the plans, specifications and other Contract Documents, nor of its responsibility for the proper matching and fitting of the Work. When professional certifications and/or calculations of performance requirements and criteria for materials, systems designs, or equipment is required by the Contract Documents, the Contractor shall be entitled to rely upon the accuracy and completeness of such calculations and certifications. The Subcontractor agrees to indemnify and hold harmless the Contractor from all loss, cost, and expense (including attorneys fees and expenses) incurred due to any allegation that the certifications or calculations of performance criteria for materials, system, designs, or equipment is inadequate, in error, or not in conformance with the Contract Documents.

- 10.4 Subcontractor's Superintendent/Foreman/Representative - Subcontractor shall employ on the job site a competent full-time Superintendent, Foreman, and/or Representative, satisfactory to Contractor, with full authority to act on Subcontractor's behalf. Said Superintendent, Foreman and/or Representative shall attend all job progress meetings while the Work is in progress and shall be active on the Project until the Project final acceptance, including completion of punch lists. Subcontractor shall also employ competent full-time foremen on-site at all times while the Work is in progress. Subcontractor shall provide written designation of its Superintendent and foremen on the Project to Contractor prior to commencement of the Work, and shall not change Superintendent or foreman without Contractor's written approval, which shall not be unreasonably withheld. In the event Subcontractor seeks such consent or in the event the replacement of Superintendent is outside the control of Subcontractor, it shall submit to Contractor, for its approval, the proposed replacement candidate's experience and qualifications. Contractor shall have the right to require replacement of any of Subcontractor's personnel because of incompetence or for any other reasons related to performance of the Work at the reasonable discretion of Contractor. A list, by name and position, of all Subcontractors' personnel working on site shall be hand delivered to Contractor's Project Superintendent by 9:00 a.m. each day when required by Owner. The Subcontractor's Superintendent and Foreman are required to be fluent in English and in the language spoken by its workers. Superintendent and/or Foreman shall be present for all inspections with jurisdictional agencies.
- 10.5 Punch List Work - Subcontractor shall employ laborers skilled in their trades. Subcontractor shall designate a punch out crew and warranty repair team whose members shall be subject to the reasonable approval of Contractor. Punch list work is to be completed within twenty (20) days of punch list issuance or as otherwise defined except for long lead items. If punch list work is not progressing, upon 24 hours written notice, Contractor may complete punch list on behalf of Subcontractor and back charge Subcontractor for this work. Subcontractor shall be responsible for timely completion of the Work regardless of any work stoppage by Subcontractor's employees or its subcontractors.
- 10.6 Compliance with Law - Subcontractor shall comply with all federal, state and local laws, statutes, ordinances, rules, licenses, and regulations, including but not limited to OSHA and its state or local equivalent standards, immigration laws and patent laws, at its sole expense. Subcontractor shall be liable to and shall indemnify Contractor and Owner for all liability, damage, loss, cost and expense (including attorneys' fees) attributable to any acts or omissions by Subcontractor, its directors, officers, employees, agents, and servants resulting from failure to comply therewith including, but not limited to, any fines, penalties or corrective measures. By signing this Master Subcontract Agreement and future Subcontract Agreement Riders, Subcontractor represents that he is duly licensed to do business by all local, state, and national authorities applicable to the projects. Subcontractor shall prior to any excavation operation, contact the local utility company (ies) or location service to locate existing underground utilities.

Notwithstanding the foregoing, Subcontractor shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner, Engineer, or Architect

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10.7 Safety – Subcontractor will familiarize itself with Hubert Construction, LLC’s Safety Policy Statement as posted to its web site.

Subcontractor shall comply with all Federal and State regulations applicable to its work. Subcontractor shall adequately and properly protect its workmen, Work, materials, and equipment by providing appropriate protective and safety apparatuses, and shall establish, implement and maintain safety measures, policies, provisions and standards conforming to those safety programs as required for the Project, and shall adhere to Contractor’s directions and all safety/health regulations and requirements so as to avoid injury or damage to persons or property, and shall be directly responsible for damage to persons or property resulting from failure to do so. Subcontractor’s personnel shall wear all approved and proper safety equipment and clothing and shoes appropriate to the project environment at all times. Subcontractor construction trailers must have emergency phone numbers, fire extinguishers, first aid supplies, HAZMAT listings, OSHA poster posted, and OSHA log posted as required. Each Subcontractor is responsible for maintaining a written HAZMAT policy and safety programs for their employees.

If, in the sole opinion of Contractor, the job is not being maintained in a safe condition after twenty-four (24) hours advance notification to Subcontractor, upon Subcontractor’s failure to cure Contractor may have this condition corrected and charge the costs to the responsible parties. Contractor may, at its discretion, backcharge Subcontractor for fines levied by OSHA or similar state agency for citations issued to Contractor under the Multi-employer policy which were a direct result of Subcontractor’s Action.

10.8 Delivery, Distribution And Storage Of Subcontractor Materials - All deliveries must be coordinated with the Project Superintendent and such deliveries and all labor to handle, hoist, unload and distribute materials and equipment to those area(s) and/or location(s) to receive shall be scheduled with a minimum of forty-eight (48) hours notice to Contractor. Receipt and storage of all materials associated with the work shall be the responsibility of Subcontractor. Replacement as a result of breakage or damage during shipment, delivery, unloading, storage, erection and re-handling shall be the responsibility of Subcontractor. It is mutually agreed that storage space may be limited and cannot be guaranteed, and if such storage is allowed, all items shall be relocated as necessary for the progress of the Work as determined by Contractor and that such relocation shall be done by Subcontractor without reimbursement of costs. Materials stored within the structure shall be restricted in weight to the limits established by the Structural Engineer of record and only in areas identified by Contractor. The Subcontractor shall review the structural capability of the structure prior to the allowing installation of temporary lifting devices, staging equipment or the temporary off-loading and storage of materials. Subcontractor will not exceed design loads without making modifications to the building structure to support such loads. All modifications to the building structure to support temporary loading shall be submitted to the Architect and/or Engineer for review. Cost associated with the Architect and/or Engineer review or redesign of the structure to accept the temporary construction loading shall be borne by the Subcontractor. The Subcontractor in making or ordering shipments shall not cosign or have cosigned materials, equipment, or any other items in the name of the Contractor. Contractor is under no obligation to make payment for charges on shipments made by or to Subcontractor but may, at its option, pay such charges, in which case the Subcontractor shall reimburse the Contractor for the amount of such payment plus a service charge of twenty-five (25%) of the amount paid.

10.9 Subcontractor’s Equipment - All equipment, protection and hoisting required or desired by Subcontractor for the execution of the Work and safety of Subcontractor’s employees and its subcontractors and suppliers shall be provided wholly by Subcontractor at its expense. Subcontractor shall be solely answerable for the safety, proper and lawful construction, maintenance and use of all equipment, hoists, scaffolds, ways and tools used by Subcontractor, its subcontractors and suppliers, and their respective representatives or employees. If Subcontractor uses Contractor’s hoist, scaffolding, or facilities, it will be responsible for reasonable operating expenses of such equipment when in use for Subcontractor’s partial or sole benefit.

10.10 Inspection and Acceptance; Damage To Other Work - Subcontractors shall provide appropriate and safe facilities at all reasonable times for inspection by Contractor, Architect, Engineer, and/or Owner or Owner’s Representative of all Work and materials provided under this Subcontract, whether at the project site or at any place where such Work or materials may be observed in preparation, manufacture, or storage. Subcontractor shall, within twenty-four (24) hours after receiving notice from Contractor, proceed to remove all Work or material rejected by Contractor, whether worked or unworked, and shall take down or remove all portions of the Work which Contractor shall, by notice, reject as unsound,

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improper or in any way failing to conform to the Contract Documents, Subcontractor shall correct, repair or replace said rejected Work at once and make good all work damaged or destroyed thereby. If Subcontractor fails or refuses to do so, Contractor shall have the right to take corrective or remedial action and Subcontractor shall be liable to Contractor for the cost thereof. If, in the opinion of Contractor, it is not expedient to correct or replace all or any part of rejected Work or materials, then Contractor, at its option, may deduct from the payments due, or to become due, to Subcontractor, such amounts as, in Contractor's reasonable judgment, will represent (i) the difference between the fair market value of the rejected Work and materials and the value thereof if it had complied with the Subcontract, or (ii) the cost of correction, whichever is higher. Subcontractor's remedy for wrongful rejection of Work shall be limited to Contractor's remedy under the Contract Documents if rejection is by Owner or by Contractor at request of Owner, Owner's Representative, Architect and/or Engineers. The Work shall be accepted according to the terms of the Contract Documents. However, unless otherwise agreed in writing, occupancy or use by Owner shall not constitute acceptance of the Work. Damage to the work and materials of others resulting from Subcontractor's Work or caused by Subcontractor, its subcontractors or suppliers, shall be made good by Subcontractor at its expense.

10.11 Plant and Cleanup - The job site at all times shall be maintained in an orderly and clean condition and Subcontractor shall leave the job site, upon completion of the Work, broom clean and free of all dirt and shall remove all of its equipment and material used in prosecution of the Work. Removal and disposal of all rubbish and dirt created by Subcontractor's Work shall be performed daily by Subcontractor at its own expense. Said materials shall be properly placed in a dumpster provided by others, unless otherwise provided in the Subcontract Agreement Rider. Subcontractor shall clean all mud/earth from its vehicles and/or from public roadways soiled by its operations. Subcontractor shall repair or replace damaged, defective, and defaced work caused by its own sources or those of its subcontractors and suppliers. In the event Subcontractor fails to perform in accordance with this Article 10.11, Contractor, after twenty-four (24) hour written notice to Subcontractor, and Subcontractor's failure to cure, may perform the cleanup and charge the costs to the responsible parties.

10.12 Royalties and License Fees; Patent Infringement - Except as otherwise provided by the Contract Documents, Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented materials in the Work. Subcontractor shall defend all suits or claims for infringement of any patent rights that may be brought against Contractor or Owner arising out of or relating to the Work, and shall be liable to Contractor and Owner for all loss, including all costs and expenses, including attorneys' fees, on account thereof.

Notwithstanding the foregoing, Subcontractor shall not be responsible for such defense or loss when a particular design, process or product or a particular manufacturer or manufacturers is required by the Contract documents or where copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner, Engineer or Architect

10.13 Strikes and Work Stoppages – The Subcontractor shall not employ men, means, materials, or equipment which may cause strikes, work stoppages, or any disturbances by workmen employed by the Subcontractor, Contractor, or other contractors or subcontractors on or in connection with the work or the Project or the location thereof. The Subcontractor agrees that all disputes as to jurisdiction of trades shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect either nationally or in the locality in which the work is being performed.

To the fullest extent not prohibited by law and without limitation of any other provision hereof, the Subcontractor agrees that if for any reason labor employed by the Subcontractor (or any other person or entity engaged by the Subcontractor in connection with the work or for whose Work the Subcontractor is responsible), with the intent of impeding or stopping the progress of the Work individually or in connections with others, unlawfully strikes, slows down or otherwise engages or participated in any other withholding of or interference with services (including, without limitation, honoring pickets or pickets lines, improperly performing work required to be performed under the Contract Documents or making claims resulting in work jurisdictional disputes), and all or any such actions impede to stop the progress of the Work (and being herein referred to as an "Improper Labor Practice"), the Contractor shall have the right to require Subcontractor and/or any such person or entity take immediate action to bring about a return to normal operations and in any event maintain the progress of the Project.

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If the Improper Labor Practice is subject to grievance and/or arbitration procedure under an applicable labor agreement between the Subcontractor or such other person or entity and a union the Subcontractor shall be required, at the Subcontractor's own expense, to require all such other person or entities to take all action, including legal action, as may be required to have the dispute resolved by such grievance or arbitration procedure, including, but not limited to, obtaining prompt injunctive relief under State or Federal Law. Notwithstanding such procedures, the Subcontractor shall not be relieved of the Subcontractor's obligation to maintain the progress of the Project according to the Project Schedule.

In event that the Subcontractor fails, in the opinion of the Contractor, to take prompt remedial action as provided above, the Contractor shall have the right to (1) take such action in the name of the Subcontractor to obtain an end to the Improper Labor Practice, including legal action, and (2) charge all cost and expenses connected therewith to the Subcontractor including, but not limited to, legal, accounting, administrative, and other direct, indirect, general and special expense.

If the Subcontractor fails to carry out or comply with any provisions of this Article 10.13, Contractor shall have the right, in addition to any other rights and remedies provided by this agreement or the other Contract Documents or by law, after three (3) business days written notice mailed or delivered to the Subcontractors last known address, to terminate this Agreement in accordance with Article 17 Termination for Default.

**ARTICLE 11. SCHEDULING; TIME IS OF THE ESSENCE.**

11.1 Subcontractor expressly agrees that time is of the essence. Subcontractor shall commence the Work when notified to do so by Contractor and shall prosecute the same diligently and continuously and at a speed that will not cause delay in the progress of the Contractor's work or the work carried on by other subcontractor's or Owner and shall complete the Work and coordinate the Work with other work being performed on the Project, in accordance with the project requirements. The completion time shall be set in the Subcontract Agreement Rider, or if no time is specified therein, then in accordance with the Contractor's mutually agreed upon schedule for the project that is the subject for the Subcontract Agreement Rider shall determine the completion time.

Notwithstanding other language, Subcontractor's planning and pricing are premised upon its commencement of work in accordance with the latest mutually agreeable project schedule and uninterrupted performance to completion in accordance with the sequence shown by that project schedule

11.2 Subcontractor shall participate and cooperate in the development of the project schedule, providing information for the scheduling of the dates, duration and sequence of activities and labor hours for each scheduled activity and phase required for its Work to meet mutually agreed upon overall schedule requirements. Subcontractor shall continuously monitor the project schedule so as to be familiar with the timing, phasing and sequence of operations of the Work and of other work on the Project, and shall execute the Work in accordance with the requirements of the project schedule including any revisions thereto. Subcontractor agrees to provide Contractor with the necessary information to properly depict Subcontract Work activities, including cost and duration. All such data shall be provided within fifteen (15) days of Contractor's written notice and request. Contractor may, at its sole discretion, direct Subcontractor to make reasonable modifications and revisions to any schedule data. Subcontractor shall submit with the first requisition a list of all holidays recognized by said Subcontractor.

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

11.4 Contractor shall not be responsible for any damages, extra work, re-work, or costs attributable to the failure of Subcontractor to keep informed of Project progress and at all times be ready to perform work or any portion thereof, whether Subcontractor is already working on site or not. If Subcontractor is not working on site, Contractor will give the Subcontractor a minimum of seven (7) calendar days notice when mobilization is required.

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- 11.5 The Contractor reserves the right to reasonably modify any portion of the Project Schedule with respect to the sequence or duration of the Subcontractor's work. The subcontractor shall use its best skill and judgment to cause the work to be performed in a prompt and expeditious manner in accordance with the Project Schedule, the milestone dates or any amendments thereto. Subcontractor hereby agrees to work at least 40 hours per person per week per applicable Subcontract Agreement Rider in order to make up for time lost due to weather conditions at no additional cost. Subcontractor also agrees that portions of the Work may be required by Owner to be substantially complete in order to provide occupancy of parts of the Project prior to final completion. The cost of all such mutually agreed out of sequence Work will not result in any additional cost.
- 11.6 Should the progress of the Work or of the Project be delayed by any fault or neglect or act or failure to act of Subcontractor or any of its subcontractors or suppliers so as to cause any additional cost, expense, liability or liquidated damages only to Contractor or to Owner, Subcontractor shall and does hereby agree to compensate Contractor and Owner for and indemnify them against all such additional costs, expenses, liability, or, liquidated, damages. If Owner assesses liquidated damages against Contractor for delay(s) attributable to Subcontractor's fault, responsibility or negligence, Contractor will assess the same against Subcontractor and Subcontractor shall pay Contractor for the same.
- 11.7 Contractor, if it deems necessary, may direct Subcontractor to work overtime and, if so directed, Subcontractor shall work said overtime. Provided that Subcontractor is not responsible for delay necessitating this overtime or is in default under any of the terms or provisions of this Subcontract, Contractor will pay Subcontractor for such actual additional wages paid, at the Subcontractor's current mutually agreeable time and material rates. Contractor's obligation to pay overtime costs is conditioned upon (a) Subcontractor keeping daily reports of the overtime of each individual, his identity, and the nature of the work performed, and (b) Subcontractor presenting such records for review to Contractor's superintendent at the end of the day of the Work. Contractor's superintendent will mark the record appropriately to indicate agreement or non-agreement regarding the recorded information.
- 11.8 If the progress of the Work or of the Project is delayed by any fault or neglect or act or failure to act of Subcontractor or any of its subcontractors or suppliers, then Subcontractor shall, in addition to all of the other obligations imposed by the Master Subcontract Agreement and Subcontract Agreement Rider upon Subcontractor, shall, at its own cost and expense, work such hours, including night shifts and premium time operations, as may be necessary to make up for the time lost by reason of such delay, and Contractor shall have the right to cause other subcontractors to work overtime and to take whatever other action it deems necessary to insure the prosecution and completion of the work within the Subcontract Time of which the cost and expense of such overtime and/or such other action shall be borne by Subcontractor. If work actually falls behind the Project Schedule for reasons that are the responsibility of the Subcontractor, and it becomes apparent that the work will not be completed with the Subcontract Time, as adjusted, the Subcontractor agrees that it will, as necessary, accelerate its efforts at no additional cost to the Contractor to improve progress. Such acceleration shall include as necessary some or all of the following actions; increase manpower and crafts, increase number of working hours per shift, shifts per working day, working days per week, or the amount of equipment, or any combination of the foregoing; and/or rescheduling of activities.
- 11.9 The Contractor may also require the Subcontractor to submit a revised schedule and description of corrective actions it intends to take to assure completion of Work within the subcontract time. If the Contractor reasonably finds the proposed plan not acceptable, it may require the Subcontractor to submit revisions.
- 11.10 The Contractor, at its option, for failure of Subcontractor to comply with provisions of Article 11, may with a twenty-four (24) hour written notice supplement the Subcontractor with additional manpower, equipment and/or materials; or with a Seventy-Two (72) hour Notice to commence and diligently to continue to Cure, Terminate the Subcontractor in accordance with provisions in Article 17 – Termination for Default. Subcontractor shall be responsible for all additional cost and expenses to the Contractor.

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**ARTICLE 12. DELAYS; EXTENSION OF TIME; DAMAGES.**

12.1 Extensions of Time - Subcontractor shall be entitled to an extension of time for performing and completing its Work upon the same terms and conditions that an extension of time is allowable, and only to the extent actually allowed, to Contractor by Owner under the terms of the Contract Documents. Notice of the excusable delay shall be given to Contractor in writing within three (3) calendar days from the beginning of said delay in order that Contractor may, in turn, notify Owner. Failure to give timely notice of excusable delay shall waive Subcontractor's right to a time extension. Owner's decision with regard to the delay, including the assessment of actual, consequential and/or liquidated damages shall be binding upon and chargeable to Subcontractor for delay attributable to Subcontractor fault or the fault of any of its subcontractors or suppliers, subject only to the disputes procedure provided in the Contract.

12.2 Damages for Delay - Contractor shall not be liable to pay Subcontractor additional substantiated costs or damages for any delays or impacts occurring beyond Contractor's control, including the delay of Contractor's other subcontractors, or for delay or impacts caused by Owner except as specifically provided herein unless such delays are greater than sixty (60) days. Subcontractor shall be entitled to reimbursement for any damages for delays recovered from Owner, and Subcontractor shall have the right, at its expense, to exercise all provisions of the Contract Documents to recover against Owner said damages. A time extension shall be the only relief granted to Subcontractor for delays caused solely by Contractor, other subcontractors or suppliers, or any other events not caused by Owner unless the delays are greater than 60 days.

**ARTICLE 13. EXTRA WORK.**

- 13.1 No additional or extra work of any kind shall be performed by Subcontractor except upon prior written authorization by Contractor. The form of written authorization may be letter, facsimile, or electronic mail (e-mail). In the event that Subcontractor proceeds without such written authority, Subcontractor shall be deemed to have waived any and all claims for additional payment therefore.
- 13.2 In the event that Subcontractor encounters circumstances giving rise to a claim for extra work, it shall give notice of same and a proposal for costs and time extensions, in accordance with Article 14 - Changes. Payment for said changes will be made in accordance with Article 4.2.

**ARTICLE 14. CHANGES.**

- 14.1 Contractor may, at any time, unilaterally or by agreement with Subcontractor, without notice to the sureties, make changes in the Work covered by the Subcontract Agreement Rider. Any unilateral order or agreement under this Article 14 shall be in writing and Subcontractor shall perform the Work as changed without delay. Subcontractor agrees to continue with the Work, including any change, notwithstanding a dispute regarding any change to the Work after written authorization and as long as Subcontractor has been paid per Article 4.2 for work in place up to date. If price is not agreed to, Subcontractor agrees to continue with Work in a method proscribed in contract documents.
- 14.2 Subcontractor shall submit any proposals for equitable adjustments in the price, schedule or other provisions of the Subcontract Agreement Rider for changes directed by Owner, or as a result of deficiencies or discrepancies in the Contract Documents, to Contractor. Said proposal shall be submitted in writing by Subcontractor at least five (5) days earlier than the time allowed by the Contract Documents for Contractor to submit its proposal to Owner, and shall be in sufficient detail (breakdown of pricing by line item of work showing quantity and unit price) and as prescribed in the Contract Documents. In any event, Subcontractor shall submit its proposal in no more than ten (10) days from the notice of the change order directed or proposed by Owner. Contractor shall process said proposals for equitable adjustments or claims in the manner provided by and according to the Contract Documents. Subcontract adjustments shall be made only to the extent that Contractor is entitled to relief from or must grant relief to Owner. Further, each Subcontract adjustment shall be equal to Subcontractor's allocable share of any adjustment in Contractor's contract with Owner. Subcontractor's agrees to accept, as its sole and exclusive remedy, the amount of any allocable share determined by the Contractor, after allowance of Contractor's normal overhead, profit and other interest in any recovery by making a reasonable apportionment, if applicable, between Subcontractor, Contractor and other subcontractors or persons with interests in the adjustment. This paragraph shall also cover other adjustments in price, schedule or other relief allowed by the Contract

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Documents. All Change Directives will be in writing and signed with mutually agreed price or work will be performed on a time and material basis. Payment is due per Article 4.2.

- 14.3 For changes ordered by Contractor independent of Owner or the Contract Documents, Subcontractor shall be entitled to an equitable adjustment in the Subcontract price and schedule, as appropriate. Subcontractor proposal shall be submitted in writing by Subcontractor within ten (10) days after the Contractor request and shall be in sufficient detail with breakdown of pricing by line item of work showing quantity and unit price.
- 14.4 Unless otherwise stated in the Subcontract Agreement Rider or Contract Documents, for change order work Subcontractor performs, Subcontractor shall be entitled to a maximum mark-up of fifteen (15) percent of the total cost of the change order work for overhead and profit. If a sub-subcontractor (i.e., a second-tier subcontractor) performs the change order work, Subcontractor shall receive a maximum mark-up of five (5) percent of the cost of the change order work performed by the sub-subcontractor, and the sub-subcontractor performing the work shall receive a maximum mark-up of fifteen (15%) percent of the total cost of the change order work. Third- and lower-tier subcontractors shall not be entitled to be paid any mark-up by Contractor, and shall be covered under the mark-up received by the sub-subcontractor (i.e., second-tier subcontractor).
- 14.5 Changes ordered by Owner shall be performed and paid for in accordance with the terms of the Contract Documents and Subcontract Agreement Rider, including all rights of dispute and appeal, provided reservations and exercise of said rights do not interfere with the progress of the Work. If the Contract Documents do not address payment to Subcontractor for change order work by Subcontractor or its subcontractors, the payment provisions of Article 14.5 will apply.

**ARTICLE 15. ALTERNATIVE DISPUTES RESOLUTION PROCESS.**

- 15.1 The Contractor and Subcontractor covenant and agree in the event of any dispute (provided that Subcontractor followed all provision of Article 14), or other matter in question arising out of or relating to the Master Subcontract Agreement and/or Subcontract Agreement Rider or breach thereof (hereinafter referred to as “dispute(s)”), the Contractor and Subcontractor shall continue to perform (except to the extent performance is otherwise excused pursuant to the contract documents) all obligations as required under the Contract notwithstanding the existence of such dispute(s) and that either party may seek relief as may be permitted in accordance with the following terms and conditions:
- .1 The Contractor and Subcontractor agree to negotiate, in good faith, in an attempt to resolve any dispute(s) for a period of at least sixty (60) business days following receipt of written notice (notification of any such dispute must be asserted in writing within five (5) days of either party’s first knowledge of the dispute) from either party to the other which will set forth, in specifics, the nature and description of the disputes(s), the actions or inactions of either party which caused the dispute(s), and the relief or remedy requested by the notifying party;
  - .2 Should Contractor and Subcontractor be unable to resolve said dispute(s) through good faith negotiation, Contractor and Subcontractor agree to attempt in good faith to resolve said dispute(s) through mediation by a mediator jointly agreed by Contractor and Subcontractor administrated by an organization offering commercial mediation services, which is acceptable to both parties, as a condition precedent to arbitration and/or litigation herein provided. All mediation hearings shall be conducted in the jurisdiction in which the project is located utilizing the laws of the State in which the project is located and the parties agree that the costs, experts’ fees, and/or attorneys’ fees of the mediation process will be allocated in accordance and in proportion to the fault of the party as determined by the Mediator and if the dispute is not resolved through the mediation process, both parties shall share equally in the cost;
  - .3 Should Contractor and Subcontractor be unable to resolve said dispute(s) through mediation, and if mutually agreed upon, any and all disputes(s), shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then pertaining. The organization providing arbitration services, which shall be acceptable to both parties and any arbitrator(s) appointed thereby, shall have no jurisdiction, power, or authority to decide or award punitive damages. The award(s) rendered by the arbitrator(s) in accordance with this provision shall be final and binding and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. All arbitration proceedings or hearings

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shall be conducted in the jurisdiction in which the project is located utilizing the laws of the State in which the project is located. The parties agree that the costs, experts' fees, and/or attorneys' fees of the arbitration process shall be allocated in accordance and in proportion to the fault of the party as determined by the Arbitrator(s).

- .4 Subcontractor agrees that Contractor may join in the arbitration proceedings any 3<sup>rd</sup> party that Contractor determines is necessary to reach a complete adjudication of any disputed arising under the terms of this Master Subcontract Agreement and/or the Subcontract Agreement Rider, and/or disputes arising under the terms of any other agreement or contract entered into between Contractor and any other party performing work on the project.
- .5 All disputes(s) not resolved by arbitration pursuant to the terms of Article 15.1.3 shall be resolved by litigation (Subcontractor expressly agrees to waive its right to trial by Jury in any litigation involving the Contractor) in Federal or State court having jurisdiction thereof after compliance with Sections 15.1.1.and 15.1.2 hereof; and
- .6 Subcontractor expressly agrees to be joined in any litigation filed by the owner of the project against Contractor or by Contractor against the Owner in either the County Courts, State courts and/or the U.S. District Courts in the jurisdiction where the Project is located, to the extent Subcontractor's work is relevant to Owner's and/or Contractor's claims.
- .7 That the failure of either Contractor or Subcontractor to comply with the provisions of the foregoing shall in contravention of the party's express intention to implement this alternative means of dispute resolution, shall constitute a breach of these provisions, and Contractor and Subcontractor expressly stipulate that any court having jurisdiction over the parties shall be empowered to immediately enjoin any proceedings commenced in contravention of this Article 15 and the party failing to comply with these provisions shall reimburse the other parties for all cost and expenses (including legal fees) incurred in enforcing these provisions. Notwithstanding anything to the contrary, nothing herein shall prevent the Subcontractor from exercising its legal right to lien the project for non-payment and to cease its operations in accordance with Article 4.2.

**ARTICLE 16. BACKCHARGES.**

- 16.1 All charges and backcharges by the Contractor against the Subcontractor must be presented to Subcontractor in writing within seven (7) calendar days of Contractor becoming aware of the event or occurrence that gave rise to the charge or backcharge. Contractor shall provide Subcontractor reasonable opportunity to promptly cure Work subject to such charge or backcharge. All charges and backcharges assessed by Contractor against Subcontractor shall be deemed accepted unless objected to in writing within five (5) days of notice.
- 16.2 Subcontractor will notify Contractor in writing within seven (7) calendar days of any backcharges.

**ARTICLE 17. TERMINATION FOR DEFAULT.**

- 17.1 If, in the opinion of Contractor, Subcontractor shall at any time (1) refuse or fail to provide sufficient properly skilled workmen or materials of the proper type and quality, (2) fail materially in any respect to prosecute the Work according to the current schedule, (3) cause any action or omission, stoppage, delay or interference with the work of Contractor or of any other builder or subcontractor, (4) fail to comply with all the provisions or fail to fulfill any obligation of this Subcontract or the Contract Documents, (5) fail to observe and comply with laws, regulations, ordinances or instructions of Contractor, (6) file a petition in bankruptcy, or have a petition in bankruptcy be filed against it, (7) make a general assignment for the benefit of its creditors, (8) request or have a receiver appointed, (9) become insolvent or a debtor in reorganization proceedings, (10) fail to make prompt payment to its subcontractors, provided Subcontractor has been paid for its work in accordance with this agreement, or (11) fail to pay for labor and material, payroll, taxes (including but not limited to payroll taxes), contributions, or insurance premiums, and/or Subcontractor's creditors claim against Contractor and/or its surety, Subcontractor shall be deemed in breach of the Master Subcontract Agreement and the Subcontract Agreement Rider.

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- 17.2 After three (3) business days' written notice to Subcontractor, mailed or delivered to the Subcontractors last known address, to commence and diligently to continue cure any failure and without the prompt correction of such failure within three (3) business days, Contractor may, at its option, without prejudice to any right or remedy (i) without voiding the other provisions of the Master Subcontract Agreement and the Subcontract Agreement Rider and without notice to the sureties, take such steps as are necessary to overcome the condition, in which case Subcontractor shall be liable to Contractor for said cost, or (ii) terminate the Master Subcontract Agreement and/or the Subcontract Agreement Rider for default.
- 17.3 In the event of termination for default, Contractor may, at its option, (a) enter on the premises and take possession, for the purpose of completing the Work, all the Project's materials and equipment that have been paid for by Contractor to Subcontractor, (b) require Subcontractor to assign to Contractor any or all subcontracts and/or purchase orders involving the Project, and/or (c) either itself or through others complete the Work, by whatever method Contractor may deem appropriate. In the event of termination or otherwise, should Contractor choose to pay any of Subcontractor's subcontractors or suppliers, any discounts arising therefrom shall accrue solely to Contractor's benefit, and Subcontractor shall have no claim and derive no benefit from said discounts.
- 17.4 In case of termination for default, Subcontractor shall not be entitled to receive any further payment until the Work shall be fully completed and accepted by Owner. At such time, if the unpaid balance of the price to be paid shall exceed the expense incurred by Contractor in finishing the work, and all other charges, expenses or damages, including reasonable attorneys' fees, such excess shall be paid by Contractor to Subcontractor. If such amounts due Contractor shall exceed such unpaid balance, then Subcontractor shall pay Contractor the difference. Subcontractor and its surety shall remain liable for all costs to complete and any damages and expenses including reasonable attorneys' fees, costs of corrective work, warranty work, or the cost to replace any defective Work, liability to third parties, procurement costs, damages assessed by Owner and other liabilities which may result from the default and breach, without waiver of any other rights or remedies available to Contractor, including liquidated damages.
- 17.5 In the event of any acts of insolvency or bankruptcy or Subcontractor's creditor claims against Contractor or its surety, or notice of levy involving delinquent taxes, Contractor shall have the right to withhold payments otherwise due Subcontractor and apply the same to secure performance of this Subcontract without prejudice to all other rights against Subcontractor or its surety.

**ARTICLE 18. TERMINATION FOR CONVENIENCE.**

- 18.1 Contractor shall have the right to terminate the Master Subcontract Agreement and/or the Subcontract Agreement Rider for its own convenience for any reason by giving written notice of termination effective upon receipt thereof by Subcontractor. Upon receipt of notice from the Contractor, Subcontractor shall cease operations, take any action as directed to preserve and protect the work and terminate all existing sub-subcontracts and purchase orders.
- 18.2 Unless noted elsewhere in the Contract Documents, Contractor shall have no liability for any damages, including loss of anticipated profits. As its sole right and remedy, Subcontractor shall be paid for all amounts due and not previously paid in accordance with the terms of Subcontract Agreement Rider, reasonable administrative cost for the settling and paying claims arising from the Termination, reasonable cost associated with the Termination of the Work, and a reasonable profit and overhead of fifteen (15%) percent.

**ARTICLE 19. PREVENTING WATER INFILTRATION; LIABILITY FOR MOLD, MILDEW OR OTHER FUNGI.**

- 19.1 Subcontractor shall use care to ensure that the Work is coordinated, scheduled, integrated, staged and otherwise performed in a manner so as to minimize, to the full extent possible, the prospect of water infiltration and/or water damage within any exterior walls or interior spaces.
- 19.2 The care required of Subcontractor includes, but is not limited to, (1) using state of the art means and methods with respect to all aspects of the Work that involve flashings, sealants, piping, ductwork, drainage, joints, intersections (especially of dissimilar materials), or penetrations, and (2) employing best practices with respect to (i) the evacuation of

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standing water within or around interior spaces, (ii) the inspection of deliveries to the Project for the purpose of identifying and rejecting (or otherwise appropriately accounting for) water-compromised materials, (iii) the protection of on-site materials from weather, and (iv) the repair and/or removal of any water-compromised Work.

- 19.3 Subcontractor shall be responsible for any action or inaction on its part (or on the part of any of its subcontractors or suppliers, or other person or entity acting at, on or under Subcontractor's behalf, direction or control) that allows mold or fungal growth to occur on exterior walls or within interior spaces at the Project. Subcontractor shall be responsible for the abatement, removal and disposal of such fungal growth, which abatement, removal and disposal must be performed in accordance with New York City Department of Health "Guidelines on Assessment and Remediation of Fungi in Indoor Environments" in effect at the time of the abatement, and to the satisfaction of Contractor, in Contractor's sole discretion.
- 19.4 Subcontractor agrees to familiarize itself and comply with the Contractor's written Water Intrusion and Mold Management Program posted on Contractor's web site.

**ARTICLE 20. LIENS.**

- 20.1 In the event that liens are filed by anyone other than Subcontractor with respect to the Work for which Subcontractor is responsible under this Subcontract, Subcontractor agrees to cause such liens or claims to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within ten (10) business days from the date of the filing thereof, and upon its failure to do so Contractor shall have the right, in addition to all other rights and remedies provided under this agreement and the other Contract Documents or by law, to cause such liens or claims to be satisfied, removed or discharged by whatever means Contractor chooses at the sole cost and expense of the Subcontractor with such cost and expense to include legal fees, bonds, and disbursements.
- 20.2 Contractor shall have the right to retain from any payment then due or thereafter to become due twice the amount which it deems sufficient to i) satisfy, discharge and/or defend against all such liens or claims; ii) make good any such non-payment, damage, failure, or default; iii) compensate Contractor and the Owner for and indemnify them against any and all losses, liability, damages, cost and expenses, including legal fees and disbursements, which may be sustained or incurred by either or both in connection therewith.
- 20.3 Prior to final payment, Subcontractor shall provide to Contractor a release of its lien and claims and all liens and claims of all persons and entities furnishing labor and/or materials for the performance of this Subcontract and satisfactory evidence that there are no other liens or claims whatsoever outstanding against the Work.

**ARTICLE 21. GUARANTEE AND WARRANTY.**

- 21.1 Subcontractor hereby guarantees and warrants that its Work shall be completed in strict accordance with the requirements of the Contract Documents and that for a period of one (1) year after acceptance of the Project as a whole or part by the Owner and the Architect (or for such longer period as may be provided in the Contract Documents), its Work shall be free from defects in workmanship, materials and equipment. Neither interim nor final payment hereunder by Contractor shall be construed as acceptance of defective or improper workmanship, materials or equipment.
- 21.2 Subcontractor agrees to perform all warranty obligations and make good, at its expense, and at the convenience of the Owner, any defect in workmanship, materials and equipment which may occur or be identified prior to the expiration of its guarantee and warranty. In addition, Subcontractor shall pay for all damages to the Project resulting from defective Work and all cost and expense necessary to correct, remove, replace or repair the Work.

**ARTICLE 22. CONTRACT INTERPRETATION.**

- 22.1 Contractor interpretation of the Master Subcontract Agreement and the Subcontract Agreement Rider requirements shall be conclusively binding upon Subcontractor, unless Subcontractor shall object in writing within forty-eight (48) hours after being advised of Contractor's interpretation and Subcontractor has not otherwise breached the terms and conditions of the Master Subcontract Agreement and the Subcontract Agreement Rider.

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**ARTICLE 23. DOCUMENT PRECEDENCE.**

- 23.1 Unless noted elsewhere in the Contract Documents, in the event of inconsistencies between requirements contained in different components of the contract documents, the order of precedence shall be as follows:
- .1 Change Orders,
  - .2 Agreement between Owner and Contractor including the Conditions of the Contract (General, Supplementary and other Conditions)
  - .3 Addenda, Letters of Clarification, and Request for Information,
  - .4 Project Specifications,
  - .5 Construction Drawings
    - a. Figures govern over scaled dimensions, and
    - b. Detailed drawings govern over general drawings
  - .6 Subcontract Agreement Rider between Contractor and Subcontractor,
  - .7 Master Subcontract Agreement between Contractor and Subcontractor,

**ARTICLE 24. ASSIGNMENT/SUSPENSION.**

- 24.1 Subcontractor shall not, in whole or in part, assign, transfer, or subcontract this Master Subcontract Agreement or the Subcontract Agreement Riders, the proceeds thereof, or funds due hereunder, without Subcontractor's surety's and Contractor's prior written consent. Contractor's consent to any assignment shall not relieve Subcontractor of any of its agreements, duties, responsibilities or obligations under this Master Subcontract Agreement or Subcontract Agreement Riders and the other Contract Documents, and Subcontractor shall be and remain as fully responsible and liable for the defaults, neglects, acts and omissions of its assignees and subcontractors and all persons directly or indirectly employed by them as it is for its own defaults, neglects, acts and omissions and those of its own directors, officers, employees, agents, and servants.
- 24.2 Subcontractor shall bind each of its subcontractors to all of the terms, provisions and covenants of this Subcontract and the other Contract Documents with respect to the sublet Work. Contractor shall have the right of refusal over any proposed sub-subcontractor or sub-subcontract. Upon request by Contractor, a copy of such sub-subcontract shall be supplied to Contractor by Subcontractor before any such sub-subcontractor begins its performance. Contractor's consent to any subletting or sub-subcontracting shall not be deemed to create any contractual relationship between Contractor and any sub-subcontractor to whom the Work or any portion thereof is sub-subcontracted, and shall not vest any right or right of action in such sub-subcontractor against Contractor. Subcontractor shall comply with any assignment provision in the Contract Documents that would benefit Owner.
- 24.3 In the event of a Termination of the Contractor's Agreement by the Owner, the Subcontractor, if requested by Owner, consents to assignment of the Subcontract Agreement to the Owner or assignee of the Owner. In such event, the Subcontractor acknowledges that the Contractor no longer has any responsibility to the Subcontractor under or relating to the Subcontract documents.
- 24.4 In the event of a Suspension of the Work by the Owner or Contractor, the Subcontractor shall be entitled to a time extension and to an equitable adjustment in Subcontract Agreement Rider Price, provided that Subcontractor's performance was delayed and interrupted by such suspension.

**ARTICLE 25. NOTICES.**

- 25.1 All written notices, of which the form of written authorization may be letter, facsimile, or electronic mail (e-mail), required under this Master Subcontract Agreement, Subcontract Agreement Rider, or the Contract Documents shall be addressed to the attention of the Contractor's Representative executing the Subcontract Agreement Rider at the Contractor's office located at:

9055 Comprint Court  
Suite 150  
Gaithersburg, MD 20877-1367

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25.2 Written notices required by the various provisions of the Contract Documents (not otherwise dealt with herein) shall be due in Contractor's office not later than five (5) days before the time specified in the Contract Documents so that Contractor will have sufficient time to forward its written notice within the required period. Failure of Subcontractor to forward written notices in a timely manner as required by the various equitable adjustment provisions of the Contract Documents shall operate to waive its rights to any such adjustment if Owner rejects the claim.

**ARTICLE 26. PRIOR REPRESENTATIONS; ENTIRE SUBCONTRACT AGREEMENT.**

26.1 All prior discussions, agreements, and understandings are deemed to be included in this Master Subcontract Agreement and the Subcontract Agreement Rider. Contractor assumes no responsibility for any understanding or representations made by any of its officers, directors, employees, or agents prior to the execution of this Master Subcontract Agreement or the Subcontract Agreement Rider. These instruments are the entire Agreement between the parties hereto with respect to the matters covered herein. No other agreements, statements, negotiations, representations, warranties, or other matters, oral or written, including Subcontractor's bid form or proposal, shall be deemed to bind the parties hereto. The marginal descriptions of any term or provision of this Agreement are for convenience only and shall not be deemed to limit, restrict, or alter the content, meaning or effect thereof.

**ARTICLE 27. MISCELLANEOUS PROVISIONS**

27.1 Captions - The captions at the beginning of each numbered paragraph of this Subcontract are for convenience only and are to be given no weight in construing the provisions of this Subcontract.

27.2 Independent Contractor - Subcontractor specifically agrees that it is, prior to the start of the Work, and will remain, an independent contractor.

27.3 Flow-Down Relationship - Subcontractor is bound to Contractor in the same way and to the same extent Contractor is bound to Owner by the terms of the Contract Documents, and shall bear all rights and liabilities with respect to Contractor as Contractor has with respect to Owner, except that the terms of this Master Subcontract Agreement and the subsequent Subcontract Agreement Riders shall govern any inconsistent provision herein and in the Contract Documents. Contractor agrees to provide subcontractor with applicable sections of Contractor's contract with Owner for review at Contractor's offices prior to start of the project. If Contractor does not provide Subcontractor with such opportunity to review said contract, the Subcontractor shall not be bound by terms of such contract.

27.4 Privity - Until the Project is fully completed, Subcontractor agrees not to perform any work directly for Owner or any of its tenants or deal directly with Owner's representatives in connection with the Project, unless otherwise approved and directed in writing by Contractor. All Work for this Project performed by Subcontractor shall be processed and handled exclusively by Contractor.

27.5 Records - Subcontractor shall preserve all shop drawings, plans, blue prints, cut sheets, field tickets, and invoices from persons or firms supplying labor or materials to Subcontractor for a minimum of three (3) years or longer as required by law from the date of the Project's final acceptance and shall provide copies of the same to Contractor upon demand.

27.6 Confidential Information - Subcontractor shall not divulge any information relating to the Project received from or supplied by Owner, Architect, their consultants, or Contractor, and shall consider such information confidential and proprietary, and shall not release or permit release of such information to other parties without the written permission of Owner and Contractor, during and subsequent to the term of this agreement.

27.7 Law - Any disagreement between the parties arising out of or relating to this Subcontract, including the breach thereof, shall be governed by the jurisdiction in which the project is located utilizing the laws of the State in which the project is located.

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- 27.8 Owner's Approval - This Master Subcontract Agreement and subsequent Subcontract Agreement Riders are conditioned upon Owner approval of Subcontractor and the terms hereof, if the Contract Documents so require. If either Subcontractor or this Subcontract is not approved, Contractor may declare this Master Subcontract Agreement and/or the Subcontract Agreement Rider null and void by written notice thereof to Subcontractor.
- 27.9 Equal Opportunity - Subcontractor shall not discriminate against any employee or applicant for employment, advancement, transfer, layoff or termination because of race, religion, sex, age, color or national origin. Subcontractor shall comply with all applicable labor statutes, ordinances, rules, regulations, and executive orders, including but not limited to Executive Order 11246, dated September 24, 1965, regulations promulgated in furtherance thereof and all equal opportunity and affirmative action requirements in the Contract Documents.
- 27.10 No Waiver - No action or failure to act by Contractor shall constitute a waiver of any right or duty afforded Contractor under this Subcontract or law, nor shall any such action or failure to act constitute approval of or acquiescence in any breach thereunder, except as specifically agreed to in writing.
- 27.11 Acceptance Of Agreements - This Master Subcontract Agreement and the subsequent Subcontract Agreement Rider's shall be fully executed prior to the commencement of any Work on any Project. Execution of the Master Subcontract Agreement and subsequent Subcontract Agreement Riders are conditions precedent to payment on any project under the terms of this agreement
- 27.12 Layout Responsibility – Contractor shall establish principal axis lines and levels whereupon Subcontractor shall layout and shall be strictly responsible for the accuracy of its work and for any loss or damages to other Subcontractors engaged in work on the site by reason of failure of Subcontractor to set out and perform its work correctly. Subcontractor shall exercise prudence so that actual final conditions and details result in alignment of finishes that are within industry standard tolerances.
- 27.13 Survivability - If any provision of the Master Subcontract Agreement or the Subcontract Agreement Rider is held to be invalid, unenforceable, or void by any competent court, the remainder of the Master Subcontract Agreement terms and Subcontract Agreement Rider terms shall remain in full force and effect and shall not be affected. .
- 27.14 Merit Shop Philosophy – Subcontractor acknowledges that Contractor promotes the advancement of the Merit Shop Construction Philosophy, which encourages open competition and a free-enterprise approach that awards contracts based solely on merit, regardless of labor affiliation.
- 27.15 Electronic Documents - Both Parties agree that any scanned or electronically digitized copy of this Master Subcontract Agreement or the Subcontract Agreement Rider made by Contractor as part of its record storage and retention program shall be as effective as the original for all purposes.
- 27.16 Complex/Critical Structures – Subcontractor shall comply with all requirements of the Complex/Critical Structures procedures of the jurisdiction where the project is located as it relates to their Work at no additional cost.

**ARTICLE 28. ADDITIONAL PROVISIONS**

- 28.1 Not Applicable

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Each Person signing this agreement represents and warrants that it is duly authorized to execute this agreement on behalf of the party that it is binding to this agreement.

The said parties, for themselves, their heirs, executors, administrators, successors, and assigns, do hereby agree to the full performance of all the terms and provisions herein contained.

IN WITNESS WHEREOF, the parties to these present have hereunder set their hands as of the day and year first above-written.

**SUBCONTRACTOR**

**CONTRACTOR**

SUBCONTRACTOR LEGAL NAME

HUBERT CONSTRUCTION, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: John J. McCarthy

Title: \_\_\_\_\_

Title: Chief Executive Officer

**Witness:**

**Witness:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: Matthew T. Shea

Title: \_\_\_\_\_

Title: President