

# MASTER SUBCONTRACT AGREEMENT

**W.E. O'Neil Construction Co. of Arizona**  
**4511 E. Kerby Ave**  
**Phoenix, AZ 85040**  
**Phone: 480 921-8000 Fax: 480 921-8937**

MSA No. 06-27625-00

This Master Subcontract Agreement (the "Agreement") is entered into on **October 30, 2023** by and between:

**Blind Ideas**  
**8960 W. Larkspur Dr, Suite 107**  
**Peoria, AZ 85381**

(the "Subcontractor") as an independent contractor, and **W.E. O'NEIL CONSTRUCTION CO. OF ARIZONA** (the "General Contractor").

Now, therefore, in consideration of the foregoing and of the mutual covenants herein contained, the Subcontractor and the General Contractor agree as follows:

- A. That General Contractor and Subcontractor enter into this Agreement to facilitate future projects in which General Contractor may choose to retain Subcontractor. The scope of work and other project specific terms and conditions shall be set forth in a work order ("Work Order") for each specific project. The "Subcontract Work" or "Work" shall include all labor, equipment, materials and services to be performed by Subcontractor, and all other obligations of Subcontractor required by the Subcontract Documents, as defined below.
- B. That General Contractor may retain Subcontractor from time to time on various constructions projects, as determined by General Contractor in its sole discretion pursuant to Work Orders to be executed in connection with each such project.
- C. That this Agreement shall apply to all future Work to be provided by Subcontractor on any project pursuant to such Work Orders, provided that the terms of this Agreement may be modified only by a subsequent written Work Order signed by both parties varying the terms of this Agreement and only as to the particular Work Order.
- D. That this Agreement shall be construed in its broadest terms, such that all provisions of this Agreement shall be given full effect to the extent possible in light of the specific terms of any subsequent Work Order(s) and work order revisions.
- E. That the terms of this Agreement shall be deemed incorporated by reference with respect to any future construction project pursuant to which General Contractor may employ Subcontractor under a Work Order, and for which General Contractor has entered into, or will enter into, a Prime Contract as defined in Paragraph 1.1.
- F. That the terms of this Agreement shall be in effect upon the earlier of: 1) execution of a Work Order for a specific project or 2) commencement of Work on a specific project site regardless of the status of a fully executed Work Order.

## ARTICLE I - THE SUBCONTRACT DOCUMENTS

1. The Subcontract Documents shall consist of (1) this Agreement; (2) the "Prime Contract", consisting of the Prime Contract Documents as defined therein which may include by way of example, a form of agreement between the Owner and General Contractor and other Contract Documents enumerated therein, including, as applicable, the conditions of the Contract (General, Special, Supplementary and other conditions), drawings/plans, specifications and addenda effective as of the execution of the Prime Contract, together with addenda or modifications issued subsequent to the execution of the Prime Contract, whether in existence before or after the execution of this Agreement and; (3) the Work Order and any documents incorporated therein. All such documents collectively comprise "the Subcontract".
2. Where there are conflicts in the Subcontract Documents, the more stringent requirement shall govern, in General Contractor's sole discretion. General Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and the Prime Contract to the extent that provisions of the Prime Contract apply to the Subcontract work. General Contractor shall have all rights, remedies and redress against Subcontractor that the Owner, under the Prime Contract, has against the General Contractor.
3. The term "Subcontract Documents" and "Contract Documents" noted throughout this agreement shall have the same meaning.
4. Subcontractor acknowledges receipt of or access to all of the Contract Documents as described herein.
5. Unless stated otherwise in the Subcontract Documents, reference to the word "day" or "days" shall mean calendar days.

## ARTICLE II - CONTRACT PRICE

1. With respect to each project, General Contractor agrees to pay Subcontractor for the strict performance of the Work the sum as specified in the Work Order ("Subcontract Sum"). The Subcontract Sum is considered firm and is not subject to increase resulting from labor, equipment, material or other foreseen and unforeseen cost escalations incurred by Subcontractor during the performance of the Work as specified in the Work Order. The Subcontract Sum includes all applicable Federal, State, County, Municipal and Local taxes. The Subcontract Sum includes all required mobilizations necessary to complete the work. The Subcontract Sum may change only by approved written change order in accordance with the provisions of the Subcontract.

## ARTICLE III - TIME AND PROGRESS OF THE WORK

1. TIME IS OF THE ESSENCE for all parties, and it is understood that the General Contractor and the Owner will sustain monetary damages if the project is delayed. The General Contractor has the right to adjust the Project Schedule as the work progresses. The Subcontractor shall supply sufficient equipment, supervision, and manpower to perform his work in conformance with the Project Schedule, as adjusted.
2. Subcontractor shall at its own expense, cooperate with General Contractor in scheduling and performing the Subcontractor's work so as to avoid conflict, delay in or interference with the remaining work of the Prime Contract work of the General Contractor, other Subcontractors, or the work of the Owner's own forces or Owner's separate contractors. Subcontractor shall conform his work to the specific durations and overall Project Schedule as referenced within the Work Order, including any required overtime and expediting costs to meet the Project Schedule. Subcontractor shall (a) provide General Contractor with scheduling information and a proposed manloaded schedule for performance of the Subcontract work in a form acceptable to General Contractor within ten (10) days from the date of an executed Work Order; these activities are to be broken down in a day-to-day format. (b) provide complete contact information for all sub-tier vendors, suppliers, and Sub-Subcontractors to the General Contractor within ten (10) days from the date of an executed Work Order, (c) provide a material procurement log in a form acceptable to the General Contractor within ten (10) days from the date of an executed Work Order, and shall submit this log monthly with pay application (d) conform to General Contractor's progress schedules and all revisions or changes made thereto, (e) prosecute the Subcontract Work in a prompt and diligent manner in accordance with General Contractor's progress schedules without delaying or hindering General Contractor's work or the work of other contractors or Subcontractor, (f) coordinate the Subcontract Work with that of all other contractors, Subcontractors, suppliers and/or materialmen of the General Contractor or Owner, in a manner that will facilitate the efficient completion of the entire work, (g) acknowledge

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and accept that other Subcontractors and/or contractors will be working in close proximity and (h) in the event Subcontractor fails to maintain its part of the General Contractor's schedule, it shall, without additional compensation, accelerate the work as General Contractor may direct until the Subcontractor's Work is compliant with such schedule.

3. General Contractor shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time and order in which various portions of the work shall be installed and the relative priority of the Subcontract Work with the work of other Subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the work of all Subcontractors on the Project jobsite.
4. Subcontractor shall participate in weekly and other periodic jobsite meetings that involve scheduling, review of upcoming work activities and sequences, and comply with progress and look-ahead schedules prepared by the General Contractor. The look-ahead schedule will become binding on the Subcontractor, once issued by the General Contractor.
5. The Subcontractor shall be responsible for making all submittals (in the required quantity), gaining all approvals, reviewing all existing conditions, and procuring all equipment and materials as required to start his work at the time indicated on the current schedule or otherwise required by the General Contractor and/or pursuant to the Prime Contract, whichever is more stringent. Failure to provide any submittals within the required timeframe may result in withholding of payment until the submittals are complete in the sole judgment of the General Contractor. Prior to his mobilization, the Subcontractor is responsible to keep himself informed of the progress of the work at all times, including those activities which may affect him, or which he may affect. The General Contractor has the right to contact Subcontractor's suppliers or vendors and visit the office, shops, and yards of the Subcontractor and his suppliers and vendors in order to verify compliance with the schedule.
6. In the event of any dispute under this Agreement, including, but not limited to, scope of work, timing, schedule, payment or sequence of work, Subcontractor shall diligently perform the work as directed by the General Contractor without interruption, disruption or delay. Subcontractor's compliance with General Contractor's direction will not prejudice the final resolution of dispute. Failure of the Subcontractor to comply with the requirements of this Article shall subject the Subcontractor to the assessment of actual damages and/or liquidated damages, as applicable. These damages for delay, if provided for in the Prime Contract or elsewhere in the Subcontract Documents, shall be assessed against Subcontractor to the extent caused by, or attributed to Subcontractor, Subcontractor's employees and agents, Sub-Subcontractors, suppliers or any person or entity for whose act Subcontractor may be liable. In addition to responsibility for actual and/or liquidated damages assessed by the Owner under the Prime Contract, Subcontractor will also be responsible for actual damages for delay incurred by the General Contractor, or by other Subcontractors or parties affected by the delay caused by Subcontractor.
7. An extension of time may be granted pursuant to Article V if Subcontractor is obstructed or delayed in the commencement, construction, or completion of his work by conditions beyond his reasonable control and not contemplated by this Agreement. Subcontractor is obligated to inform the General Contractor in writing within two (2) days of the existence of such a condition so that the Owner can be similarly advised. A time extension will not be granted when Subcontractor could have anticipated or avoided the delay by the exercise of reasonable diligence and judgment.
8. No delay, suspension, or obstruction, even if caused by the General Contractor, shall serve to terminate this Agreement or increase the Subcontract Sum, except as specifically provided in the Subcontract Documents.

## ARTICLE IV - SUBCONTRACTOR'S OBLIGATIONS

1. The Subcontractor shall perform the work in accordance with and subject to all of the provisions of the Prime Contract to the full extent that each such provision is applicable to Subcontractor's work. For every Subcontractor's scope of work, any reference in the Contract Documents to "Contractor" or "General Contractor" shall be interpreted to mean "Subcontractor". Subcontractor expressly agrees that if the Prime Contract requires the performance of any act or thing by, or imposes any obligation on the General Contractor in connection with the performance or completion of any part of the work, the Subcontractor hereby also assumes such obligations and the Subcontractor shall perform the same to the full extent that the Prime Contract requires of the General Contractor. The General Contractor shall have the same right and remedies against the Subcontractor with respect to such obligations as the Owner has against the General Contractor with the same force and effect as if every such obligation, right or remedy were set forth in full herein.
2. If there is any inconsistency in the drawings, or between the drawings and the specifications, or any other contract document, unless otherwise ordered in writing by the Owner or General Contractor, the more stringent requirement shall govern, as determined by General Contractor in his sole discretion.
3. It is the intent of this Agreement that should there be any misplacement, addition or omission of a word or character on the Contract Documents, conflict between the plans and specifications, or item not in compliance with code, it shall be the Subcontractor's responsibility to bring same to the General Contractor's attention in writing. If the Subcontractor proceeds with the work, it will be considered evidence of his acceptance of the existing condition and/or substrate as being correct and to his approval.
4. Subcontractor affirms that it has read the Prime Contract associated with the Work Order and acknowledges that it has visited the site and is aware of existing building, site, and surrounding neighborhood conditions, and has researched local rules and regulations involving allowable project work days and hours, street parking, inspection procedures, and any other conditions that could affect the project. Furthermore, Subcontractor accepts these conditions and they are included in the Subcontract Sum.
5. Subcontractor will be issued an electronic set of drawings and specifications with Subcontract award. The same will apply to any documents related to Change Orders.
6. Subcontractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the General Contractor's or the Architect's review/approval of shop drawings, product data, or samples unless the Subcontractor has specifically stated in writing of such deviation at the time of submission and express approval has been given to the noted deviation or substitution. Furthermore, this "review/approval" does not relieve the Subcontractor of responsibility for accuracy of submittals/drawings, proper material selection, completeness of work or coordination with other work.
7. All shipping and delivery costs are included and Subcontractor shall provide a minimum 48-hour advance notice to the General Contractor for all deliveries. Subcontractor is responsible for providing the equipment and labor necessary to unload, store, and distribute its material, inclusive of any F.O.B. items. Subcontractor shall provide flagmen and traffic control as it relates to its work. Materials to be staged in areas designated by General Contractor. If items are furnished F.O.B., all shall be marked to correspond with a detailed placement document to facilitate identification and installation by others.
8. Subcontractor is responsible for the storage and security of his work from theft and damage until all of Subcontractor's work is accepted in writing. General Contractor will not provide security.
9. Subcontractor shall provide all hoisting, rigging, and scaffolding associated with his work.
10. Subcontractor shall obtain written approval from the General Contractor for any space required for storage and/or lay down areas. Subcontractor shall submit a diagram of any space requested for storage and lay down during the course of the Subcontractor's work.
11. Subcontractor shall provide any of his special electrical power needs and connections. General Contractor to provide a temporary power distribution system

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suitable for small hand tools unless otherwise noted.

12. Subcontractor to provide for any lighting required to properly install his work. General Contractor to provide a temporary lighting system for corridors, stairwells and paths of travel only.
13. Subcontractor to provide all required surveying and layout required to perform his work, including any field measurements necessary prior to fabrication. General Contractor shall provide benchmarks, building corners, and control lines.
14. Subcontractor is responsible for the parking requirements associated with his employee's vehicles including, but not limited to, parking fees, shuttling, et cetera.
15. Subcontractor is responsible for all HIPPA requirements for their employees including, but not limited to, providing shade, drinking water, et cetera.
16. Utilizing an electronic media approved by General Contractor, Subcontractor shall maintain on site a set of as-built drawings that are continuously updated with both horizontal dimensions and elevations of all concealed work. Subcontractor shall provide proof of these drawings being contemporaneously maintained as a condition of monthly payment.
17. Subcontractor is responsible to update all field and office sets of Contract Documents upon receipt of any revised instructions. This includes addenda, revised drawings, RFI responses, bulletins, et cetera. Subcontractor shall update these sets electronically denoting the most current construction documents.
18. Subcontractor is responsible for obtaining all local and City licenses required to perform his work at the project location. Proof of licensing shall be a condition precedent to General Contractor's obligation to pay Subcontractor.
19. Subcontractor is responsible for obtaining and paying for any special permits required for his work including, but not limited to, street closure, street use, elevator, demolition, haul route, specific OSHA permits, deferred permits, as well as any plan check and permit fees associated with a design-build scope of work such as Fire Protection, Fire Alarm, et cetera. Owner to pay for the Building Permit, unless otherwise noted.
20. Subcontractor is responsible to perform due diligence in identifying existing utilities, structures, and other existing property improvements and protecting them in the course of work. Failure to do so will make Subcontractor liable for all costs related to the repair or replacement.
21. Subcontractor is responsible for coordinating all necessary testing and inspections for his work directly with the inspection agency or local authority. This is inclusive of initiating and scheduling the request, providing prior written notification of the request to a General Contractor representative, being present for all inspections and testing, and obtaining written documentation of approval. Except as otherwise provided in the Prime Contract, Subcontractor shall pay for the cost of all testing and inspections related to Subcontractor's work. If Subcontractor fails the test and/or inspection, Subcontractor shall pay for re-inspection at his sole expense.
22. Subcontractor shall create and maintain Daily Reports which identify Subcontractor's manpower (by classification), hours of work, areas of work, equipment on-site, deliveries received, inspections passed or failed, and detailed description of the specific work performed by the Subcontractor's forces. Daily Reports shall be submitted to the General Contractor no later than the following day. Failure to comply is an event of default under this Agreement. Under no circumstance does a Subcontractor Daily Report constitute compliance with notice requirements of this Agreement.
23. Subcontractor represents and warrants that it is an expert in the particular line of work herein subcontracted and that it is competent to know whether the materials and methods specified for this work are sufficient and suitable to achieve the results contemplated by the Contract Documents. As an expert in its field of work, the Subcontractor has sole control over the means and methods by which the work is to be done, including all requirements for performing the work safely.
24. Subcontractor shall perform all work in a good and substantial manner using new materials of the quality specified and the highest quality of workmanship.
25. Subcontractor shall not put up signs or advertisements on or around the project without the General Contractor's written consent.
26. Visitors and/or Vendors will not be allowed on site without first obtaining written approval of the General Contractor and signing a release provided by the General Contractor.
27. Any and all documents provided by Subcontractor shall be in duplicate form; first form is a physical document and the second form is electronic format as approved by the General Contractor.
28. Subcontractor shall not take direction from or correspond with the Owner, Architect, consultants or any other entity as they relate to the performance of this work, unless previously approved in writing from the General Contractor or unless otherwise noted in this agreement.
29. Subcontractors must adhere to regulations and permits of Arizona Department of Environmental Quality, and the regulations provided in the Clean Water Act via the US Environmental Protection Agency (EPA) and as updated and amended. Subcontractor understands that erosion control devices will be installed onsite by General Contractor through an appointed Subcontractor. It is the responsibility of the Subcontractor to remove and reinstall daily all Best Management Practices (BMPs) as required for the Subcontractor to complete their scope of work. All storm drains and other sources of run-off or run-on must be re-established to protect the site and public during off hours.
30. Subcontractor shall train all of its employees, at his expense, as required by Federal, State, Local or any other governing agency.
31. General Contractor has a zero-tolerance policy regarding sexual harassment, or harassment of any sort. Subcontractor's Principals agree to notify all personnel who will be on this project of this policy. Sexual harassment includes but is not limited to: verbal remarks, catcalling and/or whistling and includes visually tracking any patron, staff member, visitor, vendor or other person(s) on and around premises. This policy extends internally to the jobsite and all its personnel. In the event that a possible occurrence of sexual harassment occurs, the Subcontractor's personnel involved may be asked to leave the jobsite and the premises immediately. The Subcontractor's Principals will be called upon for remedy.
32. Subcontractor shall provide full time dust control and street cleaning as needed for Subcontractor's work performed under this agreement. Street cleaning shall include the complete path of travel in/out of the site in addition to streets leading away from the site. Dust control includes sufficiently wetting down the site during and at the end of the work day to control fugitive dust pursuant to any Arizona state and local air regulations and requirements.
33. Subcontractor is solely responsible for providing all dust control for soil disturbed by Subcontractor. Subcontractor shall keep his area sufficiently dampened to control dust caused by Subcontractor's activities, and at all times provide reasonable control of dust caused by wind. Subcontractor shall employ all dirt and dust control measures required to meet all applicable codes, regulations, and governmental requirements, as amended or updated. Subcontractor will be solely responsible for any fines levied against the project from any government entities or other agencies due to dust issues arising during Subcontractor's work.
34. Any construction activities producing noise, dust, fumes, et cetera that in any way could be considered a nuisance to the surrounding area shall be completed on off hours. Subcontractor has included off-hour, shift work, fans, "smoke eaters", equipment exhaust scrubbers as required for the purpose.

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35. If required, Subcontractor's employees shall wear identifying garments and exhibit identification credentials, which the Owner may issue, in order for Subcontractor's employees to gain access to the Project or portions thereof for performance of the Work. Subcontractor shall be required to return any and all identification credentials once the Work is completed.
36. Subcontractor's employees possessing or using alcoholic beverages or illegal drugs on the Jobsite will be asked to leave and will be refused future access to the Jobsite. Smoking is allowed only in designated areas. Smoking on the jobsite is not permitted, which includes any type of electronic cigarettes, liquids, vaping accessories, et cetera.
37. No playing of radios, Bluetooth devices, iPads, iPods, headphones of any type, or other broadcasting devices shall be permitted within/or surrounding the project site boundaries.
38. Subcontractor shall not place or paint signage of any type on temporary offices/storage containers on or near building site, the building structures, site fencing, et cetera.
39. Subcontractor represents and warrants that it uses e-mail to send and receive business communications and asserts that it has a working e-mail address that is checked at least once per day. Subcontractor acknowledges that e-mail and other Internet use constitute an integral method of transacting business for the Project. Project related documents to be transmitted via e-mail include notices, Contracts, Change Orders, billings, drawings, directives, Request for Information (RFI) response, submittal responses, et cetera.
40. In the event General Contractor is required to participate in ongoing Value Engineering for the project, Subcontractor at no additional cost shall fully participate in General Contractor's effort upon request by providing alternate finishes, materials, means of construction, et cetera that will preserve the intent of the design yet provide cost or schedule savings to the project.
41. Subcontractor shall assume a certain number of weather delays to be included in their overall contract schedule durations. Subcontractor acknowledges that the project schedule contemplates 12 working days of weather delays each year, such that Subcontractor shall not be entitled to an extension of the contract time for the first twelve (12) working days of weather delays per year. Subcontractor's sole remedy for weather delays and the resulting "dryout" time beyond the included rainfall days is extension of time only. The term "weather delay" shall mean and include all weather impacts including, but not limited to, rain or other weather condition which materially impairs the ability to perform work four (4) hours or more in a work day.
42. Subcontractor is responsible to provide all layouts for its work from survey control points and lines, including all building corners, grid lines, offsets, et cetera. The lines as chalk lined on concrete to be applied with a method that can be cleaned off easily. No permanent markings shall be allowed on the concrete decks (i.e.: paint, sharpies, keel, et cetera). These permanent marking methods are known to bleed through onto the finished flooring surfaces, especially vinyl products. Any permanent markings made by accident shall be removed at once with a means to remove the entirety of the material used to make the mark. If removal is not sufficient, General Contractor may remove the markings and back charge the specific trade for this Work.
43. Subcontractor shall provide flag men for all trucking operations, material and equipment delivery, mobilization and demobilization, as needed.
44. Subcontractor acknowledges that several move-ins will be required of Subcontractor to complete its work as directed by General Contractor, and that all associated costs are included in the Subcontract Sum. Project has been broken into multiple phases and multiple areas will be under construction simultaneously requiring multiple crews, shift, et cetera. It is understood that each phase of work will consist of multiple trades working together in the same space. Subcontractor agrees to coordinate with all other trades who will be working in and around this Subcontractor's scope of work on a daily basis. This coordination will include clean up, material relocation, work sequencing, et cetera as required in order to avoid hindering another Subcontractor from completing their scope of work. A move-in is defined as utilizing labor AND heavy equipment on site. Should equipment be removed from the site and is needed back on site for added work (which is not due to any fault or oversight of this Subcontractor), it will be defined as another move-in. If equipment is not utilized and labor only is utilized, it will not be defined as a move-in. Heavy equipment is defined as requiring a trailer for transit.
45. Subcontractor shall ensure that its scope of work does not impede the basic operation and function of the existing property during the course of construction. Any required utility shut downs will be coordinated with and approved by General Contractor a minimum of two weeks prior to work.
46. Subcontractor shall perform all layout and shall be responsible for all field measurements for custom fabrications. General Contractor shall be responsible for providing major grid line intersections only.
47. Subcontractor shall have fire extinguishers in place at the immediate work area as required by authorities having jurisdiction. All extinguishers on site shall have up to date inspection records and certification documents.
48. Subcontractor shall have a First Aid kit on the premises and stocked such that it meets OSHA requirements.
49. Subcontractor is responsible for all penetrations associated with their work. This includes patching/sealing penetrations as required by project conditions and specifications.
50. Subcontractor is to comply with all local, city, county, state, and federal ordinances, statutes and requirements. No work is to be deemed completed until final inspection and approval by the appropriate public agencies, as well as acceptance by General Contractor and Owner. Such acceptance and/or inspector approvals and/or payment by General Contractor shall not bar any claim against Subcontractor for defects in workmanship or materials or deviations from the requirements of the Subcontract Documents or from said rules, regulations, and requirements. No indications in the plans and specifications shall be construed to permit work or materials not conforming to these codes.
51. All work is subject to inspection by relevant government inspectors (i.e. local, state and/or federal, as applicable to a specific item of work) and by General Contractor and the Owner and his appointed consultants. The Subcontractor will be responsible for any costs associated with remediation of unacceptable work and/or materials, and any associated re-inspection and re-observation costs. In no event will a correction notice issued by a government inspector substantiate a change order request by this Subcontractor to the Owner or General Contractor. It is understood that this Subcontractor is an expert in this field of work and will not proceed with installation of any work which is not in conformance with building code unless specifically directed in writing to do so by the General Contractor, Owner or Architect. In the event that a correction notice is issued in which the Subcontractor does not agree, Subcontractor will be solely responsible for correction and/or contesting the correction notice. If directed by General Contractor, Subcontractor will immediately proceed with correction at no cost to the General Contractor or Owner. The General Contractor will have sole discretion as to the effect of the correction notice on the project schedule.
52. Subcontract amount includes, and Subcontractor shall pay, all taxes, licensing, OSHA permits, and other incidental permits related to Subcontractor's work. Subcontractor shall obtain all required business licenses and provide copies to General Contractor prior to start of work. Include all local, county, state and federal sales taxes, freight and delivery fees.



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53. Subcontractor shall verify that all surfaces and conditions are ready for construction. Subcontractor shall immediately notify General Contractor's Project Superintendent, in writing, of any conditions which will adversely affect his work. Moreover, Subcontractor agrees that once the Work has begun this shall constitute acceptance of all existing conditions.
54. Subcontractor shall effectively secure and protect his work and assume full responsibility for its condition until final written acceptance by Architect, Owner, and General Contractor.
55. Subcontractor shall comply with all federal, state, and local laws, regulations, ordinances, building codes, and other rules applicable to Subcontractor's performance of the Work. Subcontractor and its sureties shall defend, indemnify and hold harmless Contractor from and against any damages, penalties, or costs of any nature arising out of Subcontractor's failure to comply with such laws, or failure of Subcontractor's employees, agents, representatives, sub-subcontractors or suppliers to so comply.

## ARTICLE V - CHANGES IN THE WORK

1. Under no conditions shall Subcontractor make any changes, either as additions or deletions, without written order or direction from the General Contractor. General Contractor shall not pay any extra charges requested by the Subcontractor that have not been agreed upon in writing by the General Contractor. If the Subcontractor initiates an unauthorized substitution, deviation or change in the work that affects the work or expense of other trades, Subcontractor shall be liable for the associated expenses.
2. In the event that a potential change or extra work is recognized, General Contractor will request the Subcontractor to submit a proposal, which Subcontractor shall provide within five (5) days of the General Contractor's request, unless extended by mutual written agreement. Subcontractor shall not proceed with a change or extra work unless it first has a specific Potential Change Item (PCI) control number issued by the General Contractor. Without this specific PCI control number any change or extra work will NOT be compensated, regardless of merit. The proposal must reference this specific PCI control number in order to be reviewed. The proposal shall include a breakdown which includes quantities of various materials, hours of labor required with respect to each class of work, items subcontracted, and individual line items for overhead and profit. Deductions in work scope to be priced similarly to additions. Lump sum pricing for changes or extra work without a breakdown will NOT be accepted. Failure to provide pricing within the required timeframe will be the Subcontractor's agreement of no additional cost or time for the change or extra work. If the proposed change or extra work has any time impact in the opinion of the Subcontractor, the Subcontractor shall include a time extension request with substantiation in the Subcontractor's proposal, or it will be conclusively agreed that there are no such schedule-related impacts.
3. In the event the Subcontractor performs authorized work as directed by General Contractor on a time and materials (T&M) basis, Subcontractor shall furnish to the General Contractor on a daily basis all timesheets, material tickets, and listing of any other items for which compensation is requested for General Contractor's review and approval. All items must be listed on the document at the time of General Contractor's signature. Signed T&M documents do not constitute an approved change order. They are only verification of the work. Copies of these signed documents must be included as back-up for the change order request, which must be submitted no later than five (5) days after the conclusion of the T&M work. Any costs not submitted for approval pursuant to these requirements will not be compensated.
4. In the event General Contractor and Subcontractor cannot agree on whether or not the work is changed or extra work, or on the value of or time impact as a result of changed or extra work, or if Subcontractor is directed to proceed with changed or extra work prior to issuance of a change order, Subcontractor shall proceed with and timely prosecute the work as directed by General Contractor. Upon receipt of this direction, the Subcontractor shall diligently perform the work without disruption or delay. Disputes will be resolved pursuant to this Agreement.
5. Unless otherwise provided in the Prime Contract, the Subcontractor's mark-up for overhead and profit on changed or extra work performed shall not exceed those indicated in the Work Order. Labor rates used must be justified, including a detailed breakdown of burden, benefits, insurance, and payroll taxes. Subcontractor agrees to give General Contractor access to his certified payroll records to confirm actual pay rates.
6. By executing a Change Order, Subcontractor agrees that the compensation in both time and amount is in full, and is inclusive of any inefficiency, delays, extended overhead, lost productivity, or any other direct or indirect impacts. Failure to promptly return (no later than 14 days from the date of issuance) the executed Subcontract Change Order may result in withholding of progress payments for the changed work, at the General Contractor's sole discretion.
7. In the event that General Contractor directs Subcontractor to work overtime at the General Contractor's expense, Subcontractor agrees to perform such work and shall be reimbursed only for the difference between regular time and overtime rates and the related payroll taxes, insurance, and benefits. Subcontractor shall not be compensated for inefficiencies or declines in productivity. Nothing herein shall be construed to obligate General Contractor to pay for any overtime work if it has not been approved in writing, or for any overtime work caused by the failure of Subcontractor to provide sufficient manpower or otherwise maintain the progress of the work.
8. In the event of any dispute, controversy, or claim for additional compensation or time extension, Subcontractor shall provide the General Contractor with written notice no later than five (5) days from the occurrence of the event on which the claim is made. Such notice shall include but not be limited to a statement of the extent of the time extension and additional compensation requested along with detailed support. Such notice shall describe the claim in detail so as to allow General Contractor to fully evaluate its merits. Any claim not presented within stated time period shall be considered waived by Subcontractor.
9. In the event that a change is made or extra work is required by the Owner or its agents, and the resulting Subcontractor's change request meets the merit and timeliness requirement set forth in the Prime Contract, the General Contractor will present it to the Owner. The decision of the Owner shall be final and binding upon the Subcontractor to the same extent that it is final and binding on the General Contractor.
10. No claims for additional compensation or damages for delays, whether caused in whole or in part by any conduct on the part of General Contractor, including, but not limited to, conduct amounting to a breach of the Subcontract, or delays by other subcontractors or Owner, shall be recoverable from General Contractor, and the extension of time for completion of Subcontractor's work shall be the sole remedy available to Subcontractor; provided, however, that in the event General Contractor obtains additional compensation from Owner on account of delays for which Subcontractor has made a claim in compliance with the requirements of the Subcontract, Subcontractor shall be entitled to such portion of the additional compensation so received by General Contractor from Owner as is equitable under the circumstances. In the event that General Contractor prosecutes a claim against Owner for additional compensation for any delay which includes a pass-through delay claim by Subcontractor, Subcontractor shall cooperate fully with General Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith. Nothing herein shall require the General Contractor to pursue a pass-through delay claim by Subcontractor, which determination shall be made in General Contractor's sole discretion.
11. Subcontractor cannot submit a payment request for changed or extra work until a Change Order for the work has been executed by the General Contractor and Subcontractor.

# MASTER SUBCONTRACT AGREEMENT

## ARTICLE VI - BONDING OF SUBCONTRACTOR

1. If required by the General Contractor, the Subcontractor shall execute a Labor and Material Payment Bond and a Performance Bond each in the amount of 100% of the Subcontract Sum. The Performance Bond shall provide in substance that the Surety guarantees the timely performance of all of Subcontractor's obligations under this Agreement. If the bonds are not required by the Work Order, the General Contractor shall reimburse the Subcontractor for the actual cost of the bonds, with no mark-up applied for overhead and profit. Subcontractor shall provide the actual invoice from Surety prior to reimbursement. Subcontractor is responsible for any additional costs should the actual bond costs be greater than the rate initially quoted by the Subcontractor. Said bonds shall be executed by a corporate surety acceptable to the General Contractor, licensed to do business in the State where the work is located, and shall be in a form acceptable to the General Contractor. General Contractor shall supply Subcontractor with bond forms if bond is requested. Surety shall contain an "A VI" rating as determined by Best's Key Rating Guide and be listed by the Federal Register, Department of the Treasury. Bonds shall be furnished within ten (10) days of General Contractor's request. Failure to furnish compliant bonds within this time frame will be considered a condition of default and allow General Contractor, at his sole discretion, to terminate this Agreement without penalty.

## ARTICLE VII - INSURANCE

1. Prior to the commencement of the Work, Subcontractor shall, at its sole cost secure/procure and maintain insurance with coverages and in amounts not less than the greater of those required by the Subcontract Documents, Prime Contract, governing law or as specified herein. Subcontractor shall require that its Sub-Subcontractors and consultants provide the same insurance and coverages required under this Article. The failure of the Subcontractor or its Sub-Subcontractors or consultants to provide the insurance provided herein shall be a default under this Subcontract Agreement. Absent greater specific insurance requirements given in the Work Order, the following coverages shall be met.

- A. Worker's Compensation - In the state or states which the work is to be performed, and including Employer's Liability insurance with limits not less than the following:

<u>Bodily Injury by Accident</u>	<u>\$1,000,000 each accident</u>
<u>Bodily Injury by Disease</u>	<u>\$1,000,000 each employee</u>
<u>Bodily Injury by Disease</u>	<u>\$1,000,000 policy limit</u>

If applicable such policy must provide United States Longshore and Harbor Workers, Maritime, and any other coverage required by applicable jurisdiction.

- B. Commercial General Liability - For bodily injury, personal injury, and property damage on an occurrence form (ISO Form CG 0001 or equivalent) and shall include, but not limited to, coverage for premises-operations, elevators, independent contractors, broad form property damage, XCU hazards (explosion, collapse and underground), contractual liability, riggers liability when applicable, and products and completed operations with limits not less than the following:

<u>Each Occurrence</u>	<u>\$1,000,000</u>
<u>General Aggregate per Project</u>	<u>\$2,000,000</u>
<u>Products-Completed Operations Aggregate</u>	<u>\$2,000,000</u>

Such policy must contain Severability of Interest/Separation of Insureds clause. The products and completed operations coverage (including ISO Endorsement CG 2037 or equivalent) must be maintained for a period of Ten years after final acceptance of the Project or such longer time as is required in the documents or Prime Contract. The policy may not include any limitations regarding residential or habitational projects, or any other exclusionary endorsements to the standard ISO policy referenced above.

- C. Automobile Liability - For bodily injury and property damage arising from the ownership, maintenance, or use of owned, hired, and non-owned vehicles, including - contractual liability coverage, with a limit no less than \$1,000,000 per accident.
- D. Umbrella/Excess Liability - Such policy shall be follow form excess coverage over commercial General Liability, Automobile Liability, and Employer's Liability providing equivalent coverage terms and conditions, and with limits not less than the following amounts:

- i) For Earth Retention (shoring), Concrete, Masonry, Steel, Windows/Curtainwall, Exterior Wall Systems (building envelope), Roofing, Conveying Systems (elevator and escalator), Plumbing, Fire Protection, HVAC, Electrical

- \$5,000,000 each Occurrence, General Aggregate per Project and Products-Completed Operations Aggregate

- ii) All other Subcontractors

- \$3,000,000 each Occurrence, General Aggregate per project and Products-Completed Operations Aggregate

- E. Property/Contractor's Equipment - For damage or loss to owned, leased or rented property, machinery, materials, equipment and tools ("Property") under Subcontractor's care, custody or control, covered on an all-risk replacement cost basis including debris removal. Such coverage shall apply to Property while on site, in transit, and in offsite storage. Insurance shall provide for full repair and replacement cost on an "all risk" basis. The deductible on Subcontractors policy shall not exceed \$5,000.

# MASTER SUBCONTRACT AGREEMENT

- F. Contractors Professional Liability - If Subcontractor performs design, engineering-based or other professional services as part of the Work, Subcontractor must secure/procure and maintain insurance for claims arising from such activities. If the services are provided by Subcontractor's Subcontractor or consultants, then Subcontractor's Subcontractor or consultants shall also provide the required professional liability coverage. In addition, Subcontractor's policy must include protective liability coverage excess and contingent to their Subcontractors or Consultants policy. If the insurance is written on a claims-made basis, the retroactive date shall be prior to the start of Subcontractor's work. Renewal policies during this period shall maintain the same retroactive date. Such insurance shall provide coverage of not less than a \$1,000,000 limit per claim. Such policies shall not have coverage limits which decline for costs of defense. Such insurance must be maintained for five years after final acceptance of the Project.
- G. Watercraft/Aircraft Liability - If Subcontractor utilizes watercraft, aircraft, helicopters or drones as part of the Work, Subcontractor must procure and maintain insurance for claims arising from bodily injury and property damage, with limits not less than the following amounts:
- |             |                             |
|-------------|-----------------------------|
| Watercraft  | \$ 5,000,000 per occurrence |
| Aircraft    | \$ 5,000,000 per accident   |
| Helicopters | \$10,000,000 per accident   |
| Drones      | \$ 2,000,000 per accident   |
- H. Environmental/Pollution Liability - If the Subcontractor performs any work dealing with abatement, hazardous materials, mold or mildew, or any environmentally-regulated work or other such environmentally regulated work, Subcontractor must secure/procure and maintain insurance for claims arising from such activities. If the services are provided by Subcontractor's Subcontractor, then the Subcontractor's Subcontractor shall also provide the required environmental liability coverage. If the insurance is written on a claims-made basis, the retroactive date shall be prior to the start of Subcontractor's Work. Renewal policies during this period shall maintain the same retroactive date. Such insurance shall provide not less than a \$2,000,000 limit per occurrence and shall include coverage for bodily injury, property damage, clean-up costs and completed operations caused by a pollution incident. Pollution incidents include, but are not limited to, the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including fungi, bacterial and viral matter. If the insurance is written on a claims-made basis, the retroactive date shall be prior to the start of Subcontractor's work. Renewal policies during this period shall maintain the same retroactive date. Such insurance must be maintained for five years after final acceptance of Project.
- I. Additional Insureds - The required insurance policies, with the exception of the Worker's Compensation and Contractors Professional Liability, must name the General Contractor, Owner, and others required in the Subcontract Documents (including their directors, officers, employees, and agents) as additional insureds, arising out of work performed (including completed operations) under the Contract Documents. The Commercial General Liability policy shall specifically include ISO Additional Insured Endorsements CG 2010 and CG 2037 10-01 editions, or equivalent. Subcontractor's insurance, including the Umbrella/Excess Liability, shall be primary and non-contributory with any insurance maintained by such additional insureds.
- J. Waiver of Subrogation - Subcontractor waives its right(s) of subrogation, and shall require its insurers to endorse the Workers Compensation, Commercial General Liability, Automobile Liability, Property/Contractor's Equipment, Environmental/Pollution Liability and Watercraft/Aircraft Liability insurance policies required under this Agreement to waive all rights of subrogation against the Additional Insureds and Indemnitees. For the Automobile Insurance, the Waiver of Subrogation shall apply to both liability and physical damage.
- K. Other Requirements - The required insurance policies must be endorsed to require thirty (30) days of advance written notice to the General Contractor in the event of any cancellation or reduction in coverage. All insurers must possess an A.M. Best rating of A-VII or better and be authorized to do business in the state or states where the work is to be performed. Upon written request from General Contractor, Subcontractor must supply certified copies of the required insurance policies within ten (10) days. Deductibles or SIRs may not exceed \$25,000 without the General Contractor's approval.
- L. Certificates of Insurance and Policies - Prior to commencing work but no later than ten (10) days from the date of this Subcontract, Subcontractor must provide properly completed certificates of insurance on Accord forms which evidence the required insurance. The certificates must specifically list each of the required additional insureds and specify that a Waiver of Subrogation Endorsement applies to the required insurance policies. The certificates must be accompanied by all required endorsements. Subcontractor agrees to furnish General Contractor with the same evidence of insurance required from each Sub-Subcontractor employed by the Subcontractor. Subcontractor shall provide copies of the required insurance policies within 10 days of written request by General Contractor.
- M. Subcontractor expressly agrees that the General Contractor is authorized to withhold payments to the Subcontractor until the General Contractor receives evidence of insurance as required herein.
- N. Scope/Limits of Insurance - To the fullest extent permitted by law, the coverage provided to the Additional Insureds must be at least as broad as that provided to the named insureds under the policy. In the event that any required insurance policy states that coverage to an additional insured shall be no broader than that required by contract, the Subcontractor and General Contractor agree that nothing in this Agreement is intended to restrict or limit the breadth of coverage. In the event the Subcontractor maintains higher insurance limits than set forth herein, such higher limits shall be deemed to be required by General Contractor.
- O. This Article shall survive the completion of the Work.

# MASTER SUBCONTRACT AGREEMENT

## ARTICLE VIII - INDEMNIFICATION

1. To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless the Owner, General Contractor, and others required in the Subcontract Documents, or any of their respective consultants, agents, officers, directors and employees or any of them from and against claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of, relating to or resulting from in whole or in part the performance of the Subcontract work by Subcontractor, Subcontractor's Sub-Subcontractors of any tier, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. This requirement applies regardless of whether or not such claim, damage, loss or expense is caused in part by a party to be defended and indemnified hereunder. Such obligations shall not be construed to negate, abridge or otherwise reduce other rights or obligations of defense of indemnity that would otherwise exist as to a party or person described in this Article. Notwithstanding the foregoing, if the Prime Contract contains a broader or more stringent defense or indemnity obligation than contained in this Article, then the more broad or stringent defense or indemnification requirement shall apply to this Agreement. The only exception to the Subcontractor's duties under this paragraph is to the extent that a particular claim is the result of the sole negligence, willful misconduct or active negligence of an indemnitee. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.
2. With respect to Subcontractor's obligation to defend, Subcontractor shall defend General Contractor or other indemnitee to the maximum amount allowed by law. Upon General Contractor's tender to Subcontractor of a claim or portion thereof that includes the information provided by the Claimant relating to the claims caused by Subcontractor's scope of work and a written statement regarding how the reasonable allocated share of fees and costs was determined, Subcontractor shall elect to perform either of the following:
  - a) Defend the claim with counsel of its choice. If Subcontractor elects to defend under this subparagraph, Subcontractor shall provide written notice of the election to General Contractor within a reasonable time following receipt of General Contractor's written tender, and in no event later than 30 days following that receipt. The defense by Subcontractor shall be a complete defense of General Contractor or other indemnitee of all claims or portions thereof to the extent alleged to be caused by Subcontractor, including any vicarious liability claims against General Contractor resulting from the Subcontractor's scope of work, but not including claims resulting from the scope of work, actions or omissions of General Contractor or any other party. Any vicarious liability imposed upon General Contractor for claims caused by Subcontractor electing to defend under this paragraph shall be directly enforceable against Subcontractor by General Contractor, or claimant. All information, documentation, or evidence, if any, relating to Subcontractor's assertion that another party is responsible for the claim shall be provided by Subcontractor to General Contractor.
  - b) Pay, within 30 days of receipt of invoice from General Contractor a reasonable allocated share of the General Contractor's defense fees and costs on an ongoing basis during the pendency of the claim, subject to any amounts reallocated upon final resolution of the claim, either by settlement or judgment. The General Contractor will allocate a share to itself to the extent a claim or claims are alleged to be caused by its work, actions, or omissions, and a share to each other party to the extent a claim or claims are alleged to be caused by the other party's work, actions, or omissions, regardless of whether General Contractor actually tenders the claim to any other party, and regardless of whether that other party is participating in the defense.

If a Subcontractor fails to timely and adequately perform its obligations under Subparagraph (a) above, General Contractor shall have the right to pursue a claim against Subcontractor for any resulting compensatory damages, consequential damages, and reasonable attorney's fees. If Subcontractor fails to timely perform its obligations under Subparagraph (b) above, General Contractor shall have the right to pursue a claim against Subcontractor for any resulting compensatory damages, interest, on defense and indemnity costs, from the date incurred, at the rate set forth in Arizona Revised Statute, consequential damages, and reasonable attorney's fees incurred to recover these amounts. If, upon request by Subcontractor, General Contractor does not reallocate defense fees within 30 days following final resolution of the claim, Subcontractor shall have the right to pursue a claim against General Contractor for any resulting compensatory damages with interest, from the date of final resolution of the claim, at the rate set forth in Arizona Revised Statute.

3. In the event any claim is made or threatened against any indemnitee as described in this Article, the General Contractor shall have the right to withhold from any payment due or to become due to the Subcontractor an amount sufficient in General Contractor's sole discretion to protect the indemnitees from the claims and expenses which are asserted. Alternatively, the General Contractor in its discretion may require the Subcontractor to furnish a surety bond guaranteeing protection to the full extent of this defense and indemnity obligation, which bond shall be furnished by the Subcontractor within five (5) days after written demand has been made.
4. The obligation of Subcontractor under this paragraph shall not extend to the liability of the Architect or other design consultants (except design consultants engaged by or for Subcontractor) or their respective consultants, agents and employees or any of them arising out of their preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications.
5. To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless the Owner, General Contractor, General Contractor's sureties, Architect, or other design consultant, or any of their respective consultants, agents and employees of any of them and against claims, damages, losses and expense, including, but not limited to, attorney's fees, arising out of or resulting from any mechanic's liens, stop notices, or payment bond claims filed by Subcontractor, Subcontractor's subcontractors (of any tier), anyone directly or indirectly employed by them or Subcontractor's suppliers or vendors.

## ARTICLE IX - DEFAULT, TERMINATION

1. In the event that the Subcontractor fails to comply, or becomes incapable of complying, with the terms of this Agreement, it shall be considered a default by Subcontractor of this Agreement. Default events include, but are not limited, to the following:

The Subcontractor,

- a) Fails or refuses to pay any Sub-Subcontractor, supplier or worker when due.
- b) Becomes insolvent, files for bankruptcy, files for reorganization, or makes an assignment for benefit of creditors or fails to demonstrate financial ability to timely complete the Subcontractor's work, in General Contractor's sole discretion.
- c) Fails to prosecute the procurement of equipment and material in a time frame required to achieve the project schedule.
- d) Installation of non-compliant or defective Work.
- e) Abandons the work or furnishes manpower in a number insufficient to complete the Work within the scheduled time.
- f) Fails to comply with safe practices, including the maintenance of a clean jobsite.
- g) Fails to perform or comply with any term, condition, or provision of this Agreement.



# MASTER SUBCONTRACT AGREEMENT

2. In the event of any default by Subcontractor, General Contractor shall give Subcontractor written Notice of the deficient condition and allow the Subcontractor 48 hours to cure said default, unless it involves life safety issues, in which case the cure must be accomplished immediately. If upon the expiration of the 48 hour period Subcontractor has not cured the default then General Contractor may, without further Notice, and at its sole discretion, take any or all of the following actions:
  - a) Make any payments to satisfy the Subcontractor's obligations, the cost (including associated overhead and fees) of which shall be deducted from the Subcontractor.
  - b) Extend the time frame for Subcontractor to cure the condition, providing the Subcontractor is earnestly engaged in rectifying the condition.
  - c) Perform, or have arranged to be performed, any of the Subcontractor's duties, the cost (including associated overhead and fees) of which shall be deducted from the Subcontractor.
  - d) Withhold payment or a portion of payment otherwise due and of a value appropriate for the condition of default.
  - e) Order the Subcontractor to remove any defective work or materials and to replace such work or materials with satisfactory work or materials.
  - f) Accept any defective work or materials and reduce the Subcontract Sum by Change Order.
  - g) Terminate this Agreement for cause in writing. In such case, the General Contractor shall have the right to take and use any materials, equipment, or tools of the Subcontractor for the purpose of completing the Work.
3. In the event this Agreement is terminated for cause, Subcontractor shall not be entitled to receive any further payments until the Subcontract work is complete. At that time, if the amounts earned, but not paid to Subcontractor before the termination exceed the expenses and damages incurred by General Contractor in completing Subcontractor's work, any excess shall be paid by General Contractor to Subcontractor. However, if General Contractor's expense and damages to complete Subcontractor's work exceeds the amount earned and unpaid, Subcontractor shall promptly pay the excess amount to General Contractor. The expense incurred by General Contractor shall include General Contractor's costs for completing the work, including overhead, profit, attorney's fees, and any damages, including Liquidated Damages, incurred by General Contractor by reason of Subcontractor's default. The unpaid expense will accrue interest at the maximum interest permitted by law.  
The liability of the Subcontractor hereunder shall extend to and include the full amount of Costs incurred and obligations assumed by the General Contractor in good faith under the reasonable belief that such Costs or obligations were necessary or required, whether actually necessary or required or not, (i) in completing the work and providing labor, materials, equipment, supplies and other items therefor or resubcontracting the work, and (ii) in settlement, discharge or compromise of any claims, demands, suits and judgments pertaining to or arising out of the work. An itemized statement of such obligations and payments shall be prima facie evidence of the Subcontractor's liability.
4. Notwithstanding any other provisions in this Agreement, General Contractor reserves the sole discretionary right to require Subcontractor to provide additional assurances as to Subcontractor's performance. Such additional assurances may include, without limitation, providing of additional guarantees by financially responsible parties, posting of additional performance bonds, providing updated financial information, posting collateral, distribution of funds through joint check, increased retention and providing proof of payment as to Subcontractor's employees, Sub-Subcontractors, material and equipment suppliers, and other creditors; proof of compliance with prevailing wage and all other wage and compensation laws and orders of the Industrial Wage Commission pertaining to employee compensation. Such proof requested by General Contractor may include, but not be limited to, payroll information, labor records and time records. Failure of Subcontractor to promptly comply with General Contractor's request for additional assurances shall constitute an event of default under this Agreement.
5. In addition to termination for cause as described above, the General Contractor may at any time and for any reason in General Contractors' sole discretion, terminate Subcontractor's services and work at General Contractor's convenience. Termination shall be by service of written notice to Subcontractor's place of business. Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise (a) immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of the Subcontract work, (b) make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to General Contractor or, at the option of General Contractor, give General Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such work as may be necessary to preserve and protect the work already in progress and to protect material and equipment on the jobsite or in transit thereto.
6. Upon such termination for convenience, Subcontractor shall be entitled to payment only as follows: (a) the value of the Subcontract work completed in conformity with this Agreement, the Subcontract Sum, and approved progress payment schedules, plus (b) such other costs actually incurred by Subcontractor as permitted by the Prime Contract and approved by the Owner, plus (c) reasonable markup for home office overhead and profit shall be in conformity with the Subcontract Sum and approved progress payment schedules but in no event shall exceed 15% of the cost of the work, less (d) any deductive credits or amounts due from Subcontractor to General Contractor in accordance with this Agreement. There shall be deducted from such sums as provided in this paragraph the amount of any payments made to Subcontractor prior to the date of the termination of this Agreement. In no event shall payment due hereunder exceed the amount due for approved units of work or percentage of work completed under this Agreement in accordance with approved applications for payment. Subcontractor shall not be entitled to any claim or claim of lien against General Contractor or Owner for any additional compensation or damages in the event of such termination and payment, including, but not limited to, damages for loss of anticipated profit or unabsorbed overhead for work not performed.
7. In the event it is determined that a termination of this Agreement for cause by General Contractor was improper, the termination shall be deemed to be a proper termination for convenience.
8. Upon Subcontractor default or termination, General Contractor shall have audit rights of the Subcontractor's and Sub-Subcontractor's records.

# MASTER SUBCONTRACT AGREEMENT

## ARTICLE X - DISPUTE RESOLUTION

1. If a dispute arises out of or relates to this Agreement or its alleged breach, the parties shall, as a condition precedent to mediation, arbitration or litigation, endeavor to settle the dispute first through direct discussions between executives for General Contractor and Subcontractor at a formal meeting held at the project site or General Contractor's main office. If the dispute cannot be settled within twenty (20) calendar days of this meeting, then the parties shall, as a condition precedent to arbitration or litigation, endeavor to settle the dispute by mediation.
2. Mediation shall occur under the Mediation Rules and Procedures of the Judicial Arbitration and Mediation Services ("JAMS"). The location of the mediation shall be at the project site, General Contractor's main office, or such other location as the parties mutually agree. Once one party files a Request for Mediation with the other and with the JAMS, the parties agree to conclude such mediation within sixty (60) calendar days of filing the request. The costs of the mediation shall be paid equally by the parties. Either party may terminate the mediation at any time after the first session via a formal written request delivered to the other party's representative and to the mediator.
3. If arbitration of disputes is provided for in the Prime Contract between Owner and General Contractor, and if General Contractor, in its sole discretion, elects to demand arbitration with Subcontractor individually, or as part of joint proceedings with owner or others, any dispute arising between General Contractor and Subcontractor under this Agreement, including breach thereof, shall be decided by arbitration in the manner provided for in the Contract Documents between Owner and General Contractor.
4. If the Contract Documents between Owner and General Contractor do not provide for arbitration and if General Contractor, in its sole discretion, elects to demand arbitration with Subcontractor individually, or as part of joint proceedings with owner or others, any dispute arising between General Contractor and Subcontractor under this Agreement, including breach thereof, shall be decided by arbitration in accordance with the Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services ("JAMS"), unless the parties mutually agree to other arbitration rules and procedures. The location of the arbitration proceedings shall be at the office of JAMS nearest the project, unless the parties agree otherwise. The arbitrator(s) are empowered to determine the arbitrability of any issue arising under this Agreement.
5. The surety or sureties for Subcontractor shall be parties to and shall be included in any arbitration under this Agreement upon written demand therefore by General Contractor; provided, however, that the failure or refusal of said surety or sureties to participate in arbitration herein shall not be deemed to relieve General Contractor or Subcontractor of their duties to arbitrate under this Agreement. Any arbitration under this Agreement may, at the option of General Contractor, by consolidation, joinder or otherwise, include such other persons involved in or affected by the decision by such arbitration.
6. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
7. In the event of any dispute, the Subcontractor shall in no case cease to perform expeditiously the work called for under the Agreement or as directed by the General Contractor to be performed. If any dispute or controversy arises in connection with any matter involving a direction, order, opinion or ruling of the Owner or any of the Owner's representatives, then the Subcontractor and its surety shall be bound by said ruling, direction, opinion or order to the same extent as the General Contractor may be bound.
8. In the event of arbitration or litigation, the prevailing party in the dispute shall be entitled to recover from the other party the costs of suit or arbitration, together with reasonable attorney's fees and expert fees. The "prevailing party" is the party that recovers 75% or more of the relief sought by the party claiming prevailing party status. The relief sought (whether by an affirmative claim or by defense to a claim) shall be determined by the arbitrator under all the facts and circumstances. If neither party recovers 75% or more of the relief sought, then there is no prevailing party for purposes of this paragraph. Notwithstanding the foregoing, in the event Subcontractor is pursuing a claim against General Contractor which is a pass through claim to the Owner, then Subcontractor's recovery of the costs of litigation or arbitration, attorney's fees and expert fees shall be limited to such costs and fees as are recovered by the General Contractor against the Owner on the Subcontractor's behalf.

## ARTICLE XI - LABOR

1. Subcontractor, at his own expense, shall comply with all current Federal, State, County, Municipal and Local laws that apply to hiring and employment of labor, including, but not limited to, laws and orders of the Industrial Wage Commission governing payment of wages for overtime, rest and meal periods, and similarly be responsible for compliance by his Sub-Subcontractors. Should this project be performed pursuant to the Davis-Bacon Act, or any other law dealing with prevailing wages, or with underpaid or unpaid wages of any kind. Subcontractor agrees to comply with all provisions and regulations of said laws. Should affirmative action programs be applicable to this project, Subcontractor and its Sub-Subcontractors shall comply, including all documentation associated with the program. Subcontractor shall defend, indemnify and hold General Contractor harmless from and against any liability, loss, claims, fines, awards, expenses (including legal) and any associated interest, penalties or liquidated damages which may be incurred by General Contractor resulting from Subcontractor's failure to comply with the above requirements. Within three days of becoming aware of same, Subcontractor shall give General Contractor written notice of any alleged prevailing wage or other alleged wage or compensation violations asserted by any party against Subcontractor or its subcontractors on any project on which Subcontractor has performed or is performing work for General Contractor.
2. Subcontractor shall keep a full-time competent, qualified, communicative supervisor at the job site during all times when Subcontractor's work is in progress, and this supervisor shall be authorized to represent Subcontractor as to all elements of the work. Subcontractor shall notify the General Contractor in writing prior to the start of his work with the name and qualifications of its proposed supervisor as well as prior to any planned change in supervisors. Subcontractor's supervisor must attend all weekly safety and coordination meetings held by General Contractor as well as any special meetings that may be called.
3. Subcontractor shall enforce discipline and good order among its employees, suppliers, and Sub-Subcontractors engaged in the work. This includes enforcement of project rules including, but not limited to, work hours, worker parking, respect for others work, clean-up, and safety. General Contractor may require Subcontractor to remove from the project any such employees, suppliers, and Sub-Subcontractors that General Contractor may deem incorrigible, incompetent, or a hindrance to progress of the work. Any replacement of a Subcontractor's employee is subject to prior approval from the General Contractor.
4. Subcontractor shall cooperate with the General Contractor and other Subcontractors whose work might conflict or interfere with their work and shall promptly notify General Contractor in writing of such a condition as soon as it is recognized but not later than two (2) days. Subcontractor shall actively participate in coordination meetings and drawing overlay process or 3D or Building Information Modeling (BIM) coordination in areas of congestion when required by the General Contractor or the Subcontract.
5. Subcontractor shall perform its work with labor that is compatible with that of other trades performing work at the project site. In the event of any strike, picketing, disruption, slowdown, or work stoppage affecting the project, which could delay the Subcontractor's work in any way, Subcontractor shall exercise all due diligence to overcome it. Work stoppages (including sympathy strikes) or any other stoppage of work by employees performing work on, or delivering materials to, the project shall not excuse any delay of Subcontractor in the proper performance of its work. This is regardless of whether the strike or other stoppage of work is attributed to union action or the action of an individual employee.

# MASTER SUBCONTRACT AGREEMENT

6. In the event that the General Contractor elects to establish a reserved gate system, Subcontractor shall immediately comply and notify its labor, suppliers, and Sub-Subcontractors in writing the same business day as to what gate or entrances have been established for their use by the General Contractor. Subcontractor is responsible to maintain strict compliance with the General Contractor's gate usage procedures for his labor, suppliers, and Sub-Subcontractors. Failure to comply is a default of this Agreement.

## ARTICLE XII - SAFETY

1. The Subcontractor, at its own expense, shall take all reasonable precautions to protect persons and property, at or adjacent to the project, from damage, loss or injury resulting from the Subcontractor, his employees, his Sub-Subcontractors, or other agents' performance of the Work.
2. The Subcontractor shall comply fully with all Federal, State, and local laws, regulations, and standards relating with occupational health and safety, handling and storage of hazardous materials, accident prevention, safety equipment, and safe practices including the accident prevention and safety program of General Contractor and Owner for the project. However, the establishment of a safety program by the General Contractor shall not relieve the Subcontractor of its safety responsibilities and liabilities.
3. Subcontractor accepts sole responsibility for providing a safe place to work for its employees and the employees of its Sub-Subcontractors and other agents. Subcontractor to immediately notify General Contractor of any unsafe condition it discovers or observes that is beyond Subcontractor's scope to address.
4. Subcontractor shall have his own written safety program hereon to be referred to as an Injury and Illness Prevention Program (IIPP), Heat Illness Prevention Program (HIPPP), Job Hazard Analysis (JHA), Hazard Communication (HazCom), Code of Safe Practice (COSP) and Emergency Action Plan (EAP), copies of which must be kept on the jobsite at all times while Subcontractor is present. In addition, a separate copy is to be submitted to the General Contractor at least ten (10) days prior to start of Subcontractor's work.
5. Subcontractor shall furnish General Contractor with all Safety Data Sheets (SDS) during the submittal process and shall be responsible for storing and utilizing the materials as stated on SDS. All SDS must be on file at the jobsite prior to the start of any work.
6. Subcontractor shall appoint a full-time experienced safety person to address safety issues on the project. Subcontractor agrees that this person has all of the required training and authority needed to act in this capacity. Subcontractor shall submit a site specific safety plan ten (10) days before any work or new sequence of work commences. The Subcontractor shall conduct inspections of the project to determine that safe working conditions and equipment exist and shall keep written documentation of those inspections on file.
7. Subcontractor shall ensure that all workers participate in General Contractor's site specific safety orientation program prior to each worker performing work onsite. Failure to do so may result in that worker being removed from the project site.
8. Subcontractor shall hold weekly safety meetings at the jobsite with its employees and keep written documentation of these meetings, including participant's signatures, on file and submit them weekly to the General Contractor. In addition, Subcontractor is to conduct and document weekly inspections of their work areas. These documents are to be maintained by the Subcontractor and made available to the General Contractor upon request. This includes daily equipment inspections. Subcontractor's supervisor must attend General Contractor's safety meetings.
9. Should Subcontractor create a safety hazard, Subcontractor is to install protective measures to protect against injury to all workers on-site arising from Subcontractor's work and maintain them at all times while Subcontractor is on-site. Should Subcontractor remove any such protection, Subcontractor shall promptly reinstall such protection in a proper condition prior to leaving the work area. Construction safety protection includes, but is not limited to, handrails, guard rails, floor opening protection, barricades, signage, et cetera.
10. Should there be an incident, injury, property damages or theft at the project involving either the Subcontractor's labor or its agents, Subcontractor shall immediately report the incident to the General Contractor and cooperate with the General Contractor's accident investigation. Furthermore, the Subcontractor shall provide a written report of the incident within 24 hours of occurrence.
11. General Contractor has the right (not the obligation) to discipline Subcontractor's supervision and workers when not compliant with safety rules, including removal of individuals from the project for repeated or willful violations.
12. For any month in which Subcontractor is submitting a billing for work performed he must concurrently submit a Monthly Subcontractor Safety Compliance Statement required by General Contractor. Proper completion and submittal of a Monthly Subcontractor Safety Compliance Statement shall be a condition precedent to General Contractor's obligation to pay Subcontractor.
13. Subcontractor's failure to perform adequate clean-up and housekeeping and thereby creating an unsafe work environment will be subject to disciplinary action under the safety program.

## ARTICLE XIII - CLEAN-UP

1. Subcontractor is responsible for the clean-up and legal removal of debris, waste, and rubbish generated by his employees and work operations on a daily basis, or as directed by the General Contractor. Materials to be removed from the building and placed in dumpsters furnished by the General Contractor; however, Subcontractor shall be responsible for dumpster costs for waste and debris associated with the removal of any non-conforming work. All material placed in dumpsters shall be broken down and compacted such that the maximum loading capacity of dumpsters is utilized. All materials placed in the General Contractor's dumpster by Subcontractor employees or Subcontractors' sub-tier vendors must be non-hazardous materials. Subcontractor warrants that each of his employees or sub-tier vendors is properly trained to identify and segregate all hazardous and non-hazardous waste materials. Subcontractor shall remove from the site all hazardous and universal waste that he has furnished or responsible for and legally dispose of such materials. The cost for this disposal is included in the Subcontract amount. Subcontractor shall maintain written documentation of the hazardous and/or universal waste disposal which the General Contractor may request at any time.
2. Upon completion of his work or when directed by General Contractor, Subcontractor shall remove from the project all universal waste, hazardous materials, temporary structures, debris, waste, and excess materials associated with his work operation and clean all surfaces, fixtures, and equipment relative to the performance of its work.
3. Should the Subcontractor fail to perform his clean-up function in accordance with this Subcontract then the General Contractor shall give Subcontractor written Notice of the deficiency and allow the Subcontractor 48 hours to perform the clean-up. If upon the expiration of the 48 hour period Subcontractor has not satisfactorily performed the clean-up, then General Contractor, without further notice, may perform, or have arranged to be performed, the clean-up, the cost of which shall be charged to the Subcontractor and deducted from the monies otherwise due under this Subcontract. Should the General Contractor's clean-up operation involve multiple Subcontractors, General Contractor shall divide the clean-up costs, inclusive of supervision, overhead, and profit, among the offending parties based on General Contractor's sole assessment of the degree of non-compliance. Waste which cannot be identified as being attributable to a specific trade (food wrappings, beverage containers, newspaper, general packing materials, et cetera) shall be divided based upon manpower.

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4. In cases where the lack of Subcontractor's clean-up has evolved into an ongoing problem and has become habitual in nature, General Contractor will not be required to send out written Notices of deficiency to Subcontractors, but instead can announce the deficiency in the weekly project coordination meeting and it will become as binding as if a written Notice of deficiency was given.

## ARTICLE XIV - WARRANTY

1. Subcontractor warrants to Owner and General Contractor that the materials and equipment furnished under this Subcontract shall be new unless otherwise specified and no substitutions to specified materials have been or will be made unless properly approved and authorized. Subcontractor warrants that his work shall be performed in a professional and workmanlike manner, shall be free from faults and defects, and shall be in accordance with the Contract Documents. Any work not conforming to the above requirements shall be considered defective and shall immediately be replaced upon Owner or General Contractor demand at the Subcontractor's sole cost and expense during the period of time specified in the Prime Contract Documents. Should the Prime Contract Documents not address the duration of the warranty, it shall begin upon Owner's final acceptance of the Prime Contract Work, or receipt of the "Certificate of Occupancy", whichever is later, not at completion of the Subcontract work. Unless stated otherwise in the Prime Contract Documents, the warranty period shall be one year. If the Subcontractor fails to comply with its warranty obligations, the General Contractor may correct any deficiencies, and the Subcontractor shall immediately reimburse the General Contractor for all costs, including supervision, overhead, and profit.
2. Prior to application for final payment, Subcontractor shall deliver to the General Contractor, his Warranty and the warranties of his vendors and suppliers of material and equipment on forms in accordance with the Prime Contract Documents and/or in a form approved by the General Contractor. The existence of these Warranties shall not relieve the Subcontractor's liability for defects and shall be in addition to all of the General Contractor's rights under law, and other warranty, whether express or implied. The General Contractor shall be listed as a beneficiary of all warranties required by the Contract Documents, which warranties are assignable by General Contractor to Owner or others.

## ARTICLE XV - CONTRACT PROVISIONS

1. The Subcontractor shall not, without written consent from the General Contractor, assign, transfer, or sublet the work, in whole or in part, nor assign any payment hereunder. Should written consent be given by the General Contractor, it does not relieve the Subcontractor of its responsibilities under this Subcontract. If Subcontractor subcontracts out any of his work, such Subcontract must incorporate all provisions of this Subcontract.
2. The price and scope of work as defined in this Subcontract has been reached by mutual agreement of General Contractor and Subcontractor and supersedes all previous bids, proposals, and correspondence all of which are hereby declared to be null and void. This Subcontract shall stand alone as the sole document for interpretation of scope inclusions or exclusions.
3. No amendment to this Subcontract shall change or modify this Subcontract unless it is in writing and signed by duly authorized representatives of both the Subcontractor and the General Contractor.
4. Waiver by General Contractor of any breach or default of this Subcontract by Subcontractor shall not constitute a waiver of any subsequent breach or default of this Subcontract.
5. In the event that any provision or any part of this Subcontract shall be determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by an authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining portions of this Subcontract which shall remain in full force as if the unenforceable provisions were deleted.
6. No provision of this Subcontract shall in any way cause to create a third party beneficiary to this Subcontract.
7. The captions or titles of any terms or conditions of this Subcontract are for convenience only and shall not be deemed to limit, restrict, or alter the content meaning or effect thereof.
8. Subcontract must be counter-executed with proper insurance in place, prior to Subcontractor beginning work on the project and this is also a pre-requisite for any payment. This requirement can only be waived in writing by an authorized representative of the General Contractor.
9. Each party and (at the discretion of each party) its counsel cooperated in the drafting and preparation of this Subcontract and the documents referred to herein. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Subcontract against the party that drafted it, is not applicable and is hereby expressly waived.

## ARTICLE XVI - TERMS OF PAYMENT

1. The terms of Subcontractor payment shall be determined by the terms of the Prime Contract. General Contractor shall pay the Subcontractor the billing amount previously submitted and approved, less retention, within seven (7) days of General Contractor receipt of payment from Owner. Retention shall be 10% of the value of the work performed, unless specifically provided otherwise in the Work Order. Subcontractor acknowledges and agrees the retention provided for in this Article XVI.1 is reasonable. Retention release shall also be according to the terms of the Prime Contract.
2. Receipt of payment from Owner for the Subcontract work is an express condition precedent to the obligation of any payment becoming due from General Contractor to Subcontractor for the Subcontract Work. If Owner fails to pay General Contractor for Subcontractor's work, then payment is not due from General Contractor to Subcontractor unless and until General Contractor actually obtains payment from the Owner for the Subcontract work on the Subcontractor's behalf. Payment to Subcontractor is to be made exclusively from funds paid by or on behalf of Owner to General Contractor, and Subcontractor assumes and accepts the risk of non-payment by the Owner. General Contractor shall act in good faith to pursue payment from the Owner for the Subcontract Work, including, but not limited to, exhaustion of General Contractor's collection remedies against the Owner as available under the Prime Contract and as allowed by law; Subcontractor shall act in good faith to support General Contractor's pursuit of payment from the Owner for the Subcontract Work.
3. Subcontractor shall submit its proposed Schedule of Values to General Contractor for review and approval within ten (10) days of receipt of Subcontract. The Schedule of Values shall contain sufficient detail to be used as a working tool for monthly progress evaluation. The General Contractor has the right to reject the Subcontractor's Schedule of Values if it is front end loaded, or lacks suitable breakdown or detail to be used for its intended purpose. All Subcontractor's billings must conform to a Schedule of Values which has previously been reviewed and approved by the General Contractor.

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4. The Subcontractor's monthly billings are to be submitted at least five (5) days prior to the date the General Contractor is scheduled to review the project Payment Application with the Owner. Subcontractor Change Orders (SCOs) are not allowed to be billed unless they are properly executed and returned. The Subcontractor's monthly billing must contain the following components.
  - a) Invoice in a format approved by the General Contractor, and conforming to previously approved Schedule of Values.
  - b) Subcontractor's Affidavit listing all 2nd tier Subcontractors and major vendors/suppliers associated with the billing.
  - c) Conditional Waiver of Lien associated with current invoice, including those of 2nd tier Subcontractors and major vendors/suppliers.
  - d) Updated Material Procurement Log.
  - e) Unconditional Waiver of Lien from previous month's payment, including those of 2nd tier Subcontractors and major suppliers (unless previously submitted).
  - f) Union Subcontractors shall submit monthly verification of current trust fund payment.
  - g) If required, certified payroll records of all Subcontractor's workers for the project.
  - h) Monthly Subcontractor Safety Compliance Statement.
5. Progress payments and/or final payment may be withheld from Subcontractor by General Contractor and/or Subcontractor may be backcharged to the extent that:
  - a) Subcontractor is indebted to General Contractor pursuant to this Subcontract or any other agreement between Subcontractor and General Contractor or its affiliates or subsidiaries, whether or not such other agreement is related to the Subcontract or another project.
  - b) Defective subcontract work has not been remedied.
  - c) Subcontractor has failed to pay, or provide satisfactory evidence of payment to, sub-subcontractors, suppliers, employees, laborers, union trust funds and taxing authorities, or any claim or lien by any third party has been asserted or threatened with respect to the subcontract work.
  - d) General Contractor has a reasonable basis to believe that the subcontract work cannot be completed for the unpaid portion of the Subcontract Sum or in accordance with the Project Schedule.
  - e) General Contractor, Owner or another subcontractor or supplier have been injured or damaged by Subcontractor's performance or failure to perform the subcontract work.
  - f) Subcontractor fails to submit waivers of lien rights and/or releases of claims as required in this Subcontract or fails to provide certified payroll data when requested by General Contractor.
  - g) In the event of a proposed change order deleting a portion of the subcontract work, General Contractor shall have the right to withhold from its periodic progress payments to Subcontractor an amount which General Contractor, in its reasonable judgment, determines to be the value of such work. Said amount may be held by General Contractor until the value of such work is determined by agreement or by the dispute resolution procedures provided herein.
  - h) The Subcontractor is otherwise in material breach or default of this Subcontract.

Monies withheld or retained by General Contractor from Subcontractor as provided in this Article shall not accrue interest.
6. Furthermore, Subcontractor must be in compliance with his other obligations, including, but not limited to, submission of Daily Reports, Maintenance of As-Builts, and conformance to Safety Program or General Contractor has the right to withhold payment until Subcontractor can demonstrate such compliance.
7. General Contractor, at his sole discretion, has the right to issue Subcontractor joint checks for his 2nd tier Subcontractors and major vendors/suppliers.
8. No payments shall be made for materials stored on site except to the extent allowed by the Prime Contract and payment is received for same by General Contractor. Materials for the work stored on site shall be properly protected and secured by the Subcontractor and in a location approved by the General Contractor. Materials stored in unauthorized locations shall be relocated at the General Contractor's direction and at the Subcontractor's expense.
9. Final payment, including retention release shall be governed by the terms of the Prime Contract. However, under no circumstances shall final payment be made prior to Subcontractor completing all applicable Subcontract requirements including completion of punchlist, submission of as-builts, O&M manuals and warranties, furnishing of spare parts, keys, attic stock, and the completion of training.
10. No payment under this Agreement shall be evidence of the performance of Work, either wholly or in part, and no payment shall be construed to be an acceptance of defective work or improper materials.
11. In the event any person or party furnishing labor or materials to Subcontractor files a mechanic's lien or stop notice, Subcontractor is obligated to promptly take all necessary steps to have such mechanic's lien or stop notice withdrawn, including the posting of a release bond. In the event that the Subcontractor fails to have the mechanic's lien or stop notice removed or bonded over within five (5) days, the General Contractor may take all necessary actions which it deems reasonable or necessary to cause the mechanic's lien or stop notice to be released. All costs associated with the General Contractor's actions, including the cost of any bond and any legal costs or attorney's fees, shall be deducted from amounts payable to Subcontractor. Subcontractor shall remain liable in the event that monies payable to it are insufficient to pay any expenses or damages arising from such mechanic's liens or stop notices.
12. The Subcontractor's full and faithful performance of all obligations under this Agreement is a condition precedent to Subcontractor's right to receive payment for the work performed.
13. The Subcontractor acknowledges and agrees that the above procedures are the minimum conditions which shall be met prior to any payment, partial or final, becoming due. In addition, the Subcontractor agrees that if the Prime Contract requires additional procedures supplementing the minimum procedures above, the Subcontractor shall also comply with such supplemental procedures and these also are a condition precedent to General Contractor's obligation to issue payment to the Subcontractor, and no payment shall become due unless and until such conditions are satisfied.



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## ARTICLE XVII - DESIGN-BUILD WORK

1. In addition to the work required in the Subcontract Agreement, and in the event the Work Order requires Subcontractor to perform design-build work, then this Article is applicable. General Contractor retains Subcontractor to provide all design services necessary or incidental to complete Subcontractor's portion(s) of the Work, in accordance with and reasonably inferable from that which is indicated in the Subcontract Documents, and consistent with the progress schedule prepared by General Contractor. Subcontractor agrees to perform such design work under the general direction of General Contractor and subject to the final approval of General Contractor, Owner and the Owner's Architect and/or Engineer.
2. Design services provided by Subcontractor shall be procured from licensed design professionals retained by Subcontractor or furnished by licensed employees of Subcontractor. The standard of care for design services performed under this Agreement shall be the care and skill ordinarily used by members of the architectural and engineering professions practicing under similar conditions at the same time and locality. The person(s) or entity(s) providing design services for Subcontractor shall be referred to as "the Designer". If the Designer is an independent professional, the design services shall be procured pursuant to a separate agreement between Subcontractor and the Designer. Subcontractor shall notify General Contractor in writing if it intends to change the Designer, which shall be subject to General Contractor's approval. The Subcontractor shall be responsible for coordinating its design with all other elements of the Project design.
3. Subcontractor shall furnish its best skill and judgment in the performance of the Subcontract and shall perform its design work to the satisfaction of General Contractor, the Owner and the Architect/Engineer, so that General Contractor may fulfill its obligations to the Owner. Subcontractor shall be responsible for taking field dimensions, providing tests, providing certifications and obtaining required permits as required to meet Subcontractor's design services. Subcontractor will coordinate with the Architect/Engineer, General Contractor, and General Contractor's other subcontractors, in designing its portion of the work to avoid inconsistencies and conflict in design.
4. Subcontractor will not be entitled to a change order for additional work required due to (i) failure to coordinate its design with the work of others; (ii) errors or omissions by Subcontractor or the Designer in preparing construction documents related to its Work; or (iii) omission of construction work that was required by, or reasonably inferable from, the Subcontractor's design or the Project design.
5. In addition to other warranties provided in the Subcontract Agreement, Subcontractor warrants that its design will meet or exceed any performance requirements set forth in the Contract Documents.
6. Ownership of Documents. Upon payment to the Subcontractor pursuant to the Subcontract, General Contractor shall receive ownership of the documents, drawings, specifications, electronic data and information prepared, provided or procured by the Subcontractor, any of its subcontractors, or the Designer for the Project ("Design-Build Documents").
7. If provided in the Owner-General Contractor Agreement, the Owner shall receive from the General Contractor the same ownership of property rights of the Design-Build Documents, as the General Contractor received from the Subcontractor, in accordance with ownership of documents provisions of the Owner-General Contractor Agreement. In accordance with the Owner-General Contractor Agreement, the Owner may use, reproduce or make derivative works from the Design-Build Documents for subsequent renovation and remodeling of the Work, but shall not use, reproduce or make derivative works from the Design-Build Documents for other projects without the written authorization of the General Contractor and Subcontractor. Similarly, Subcontractor shall obtain from its Designer property rights and rights of use that correspond to the provisions herein.
8. Professional Liability Insurance. In addition to the insurance required by the Subcontract, Subcontractor at its sole cost will purchase and maintain professional liability insurance with limits of at least \$2,000,000 per claim and in the aggregate, and a deductible of no more than \$100,000. This coverage must include an extended reporting period extending for at least three years after the date of Substantial Completion of the Work as a whole. Subcontractor must provide written confirmation at least once a year that this coverage remains in effect, during the entire period for which coverage is required. The policy must be endorsed or otherwise confirmed to cover the errors and omissions of the Designer, all subconsultants, subcontractors or contract employees of the Subcontractor who carry out professional design or engineering services required by this Subcontract Agreement, as well as those of the Subcontractor itself. The policy shall bear a retroactive date adequate to cover all professional services rendered for the Work, whether actually performed before or after this Subcontract is executed. A Certificate of Insurance must be submitted prior to the commencement of design services, and thereafter upon reasonable request by General Contractor. The coverage of such policies shall not be subject to declining limits for the costs of defense.

## ARTICLE XVIII - ENTIRE AGREEMENT

1. This Subcontract as defined herein constitutes the entire agreement between General Contractor and Subcontractor. This Agreement may not be changed or modified in any way except as herein provided, and no term or condition of the Subcontract Documents shall be waived or modified by the General Contractor except in writing and signed by an officer of the General Contractor.

# **MASTER SUBCONTRACT AGREEMENT**

In witness whereof, the parties have executed and counter executed this Agreement as of the day and year first above written.

\_\_\_\_\_  
**WITNESS BY W.E. O'NEIL CONSTRUCTION**                      **(DATE)**

**GENERAL CONTRACTOR: W.E. O'Neil Construction Co. of Arizona**

**BY:** \_\_\_\_\_  
**PRINT NAME:** Jason Jordan  
**PRINT TITLE** Vice President of Operations

\_\_\_\_\_  
**WITNESS BY SUBCONTRACTOR**                      **(DATE)**

**SUBCONTRACTOR: Blind Ideas**

**BY:** \_\_\_\_\_  
**PRINT NAME:** Todd Kramer  
**PRINT TITLE** President

**We acknowledge receipt (by digital or hard copy) of this Agreement, and are in full agreement.**

**INITIAL** \_\_\_\_\_