



Project Name:

McGough Job Number:

Project Address:

Owner:

Attached please find a copy of the subcontract complete in accordance with the Architect's plans and as outlined in the specifications.

Please sign and return one copy via email to the Project Coordinator listed below for our records. The subcontract will be deemed to have been accepted upon the earlier of the execution of the Subcontract or McGough Construction's receipt of your first invoice for work/materials completed for this contract.

This Subcontract may be executed by the Contractor and Subcontractor separately in counterparts which, taken together, shall constitute an original. This subcontract may be executed by facsimile, email or electronic signatures, which shall be deemed to have the same force and effect as an original signature. Whenever this Subcontract is executed in this manner, no changes, alterations, or modifications shall be accepted and both parties agree that the original version of this Subcontract is the only version that is binding.

Please note that McGough Construction will not accept any changes or modifications to the subcontract when it is returned to McGough Construction.

Please arrange to have your insurance carrier or agent furnish us with a Certificate of Insurance for the above referenced project with McGough, Architect and the Owner listed as additional insured. Your minimum coverage must be equal to the amounts shown in Exhibit B attached or previously executed under the Master General Conditions Agreement. All applicable blanks must be filled in. A properly executed certificate of insurance must be on file at our office before any work is commenced at the jobsite.

All payment requests are due at our office no later than the 25th of the month for work completed and stored during that month. Any request received after the 25th will not be considered until the following month. Payment requests can be emailed to invoices@mcgough.com. **Please include job name and contract number on the invoice and email. All subcontract invoices are to include the line item breakdown (at minimum) as indicated in the 'Scope of Work (SOW)' section of the Subcontract. Any invoices NOT including this information will be rejected.**

Please see below for the McGough project team:

Senior Project Manager	Project Manager	Superintendent
Project Coordinator	Accountant	Project Engineer

Please contact us if you have any questions regarding this subcontract.

Sincerely,

McGough Construction

Contract Date:
Contract Number:
Owner Information:

Owner Name:	Owner Contact:	Owner Address:

Project Information:

Project Name:	Project Site:

Architect Information:

Architect Name:	Architect Contact:	Architect Address:

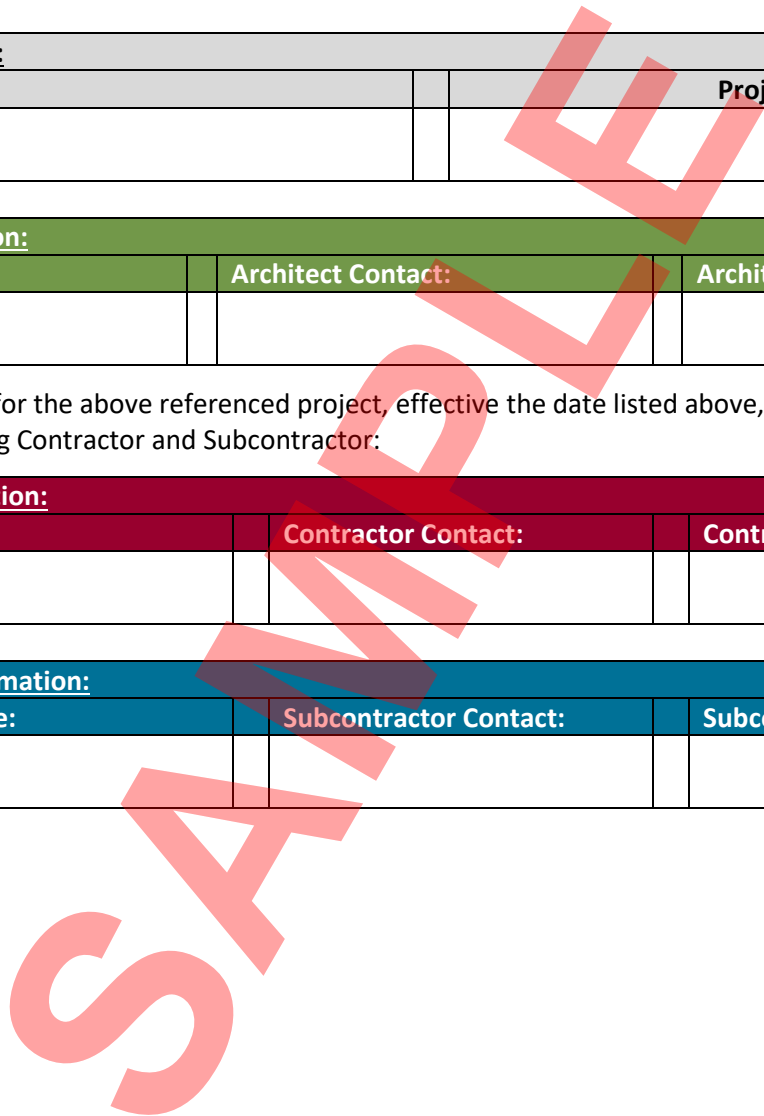
THIS SUBCONTRACT for the above referenced project, effective the date listed above, is entered into by and between the following Contractor and Subcontractor:

Contractor Information:

Contractor Name:	Contractor Contact:	Contractor Address:

Subcontractor Information:

Subcontractor Name:	Subcontractor Contact:	Subcontractor Address:



**STANDARD SUBCONTRACT AGREEMENT
LABOR & MATERIALS**

RECITALS:

Contractor has entered into a contract ("**Prime Contract**") with Owner to furnish services, labor, material and equipment for the construction of the Project on the Project Site, pursuant to drawings, specifications, general, supplemental and special conditions, addenda and amendments and other documents (the "**Work**") prepared by ("**Architect**").

Contractor desires to subcontract to the Subcontractor the performance of a portion of the Prime Contract upon terms and conditions set forth herein.

AGREEMENT:

In consideration of their mutual promises and undertakings, the Subcontractor and Contractor agree to the following:

Subcontractor shall furnish and install the necessary scope of work complete, including design services as required, in accordance with the Architect's plans and as outlined in the specifications as issued by Architect, the Prime Contract, and the Contract Documents ("**Subcontract Work**"). The Subcontract Work shall include but not be limited to the following:

SUBCONTRACT PRICE:

For full performance of the Subcontract Work in conformance with the Contract Documents, and all other terms and conditions of this Subcontract, Contractor shall pay the Subcontractor the Contract Price listed below.

SUBCONTRACTOR'S FEE ON CHANGE ORDERS:

The Subcontractor's Fee on Change Orders, including overhead and profit, is equal to the percentage listed below of the Cost of the Work for the Change Order. If the Change Order Cost of the Work is a deductive amount, the Subcontractor's Fee shall be deducted; if the Change Order Cost of the Work is an additive amount, the Subcontractor's Fee shall be added.

\$	Dollars 00/100
-----------	-----------------------

SCOPE OF WORK (SOW)			
Job Number	Phase	Description	Amount

MISCELLANEOUS INFORMATION		
Retainage on progress payments shall be held in the amount of		
McGough Standard Insurance Requirements	Included	
Shop Drawings and Engineering	Included	
Subcontractor's Fee on Change Orders <i>(See additional information above)</i>		
100% Performance and Payment Bond	Not Applicable	

WORKFORCE GOALS

**STANDARD SUBCONTRACT AGREEMENT
LABOR & MATERIALS**

Minority Workforce Goals	
Section 3 Workforce Goals	
Female Workforce Goals	

VENDOR GOALS	
SBE Vendor Goals	
WBE Vendor Goals	
MBE Vendor Goals	
Section 3 Vendor Goals	

**DOCUMENTS AND SUPPLEMENTAL INFORMATION
(List documents with dates below)**

*Extra construction documents will not be available on-site for your field crew to use.
Subcontractor is responsible to forward any and all applicable documents received in your office to the field in a timely manner.*

All Division 00 and 01 Specifications	Included
	Included
	Included
	Included

SCHEDULE

Project Schedule Dated	
------------------------	--

SUBCONTRACTOR MANAGEMENT

Project Work Hours	7:00 AM to 3:30 PM	
Prepare detailed schedule to support McGough provided schedule	Included	
Attend Project Progress Meetings as Requested	Included	
Mandatory attendance at Pull Planning / Weekly Work Planning Sessions as scheduled	Included	Attendance required by Subcontractor Project Manager and Subcontractor Field Foremen
Price Change Order Proposals within five (5) Business Days	Included	
to be Project Manager for the duration of the project	Included	
to be Superintendent for the duration of the project	Included	
Coordinate all deliveries with McGough Project Superintendent	Included	

ALSO INCLUDED BUT NOT LIMITED TO:

INCLUSIONS	

COVID-19: SUBCONTRACTOR COMPLIANCE WITH ALL OWNER POLICIES AND REQUIREMENTS, FEDERAL AND STATE LAWS, STATUTES, ORDINANCES, CODES, RULES AND REGULATIONS, MUNICIPAL ORDINANCES AND REGULATIONS, AND LAWFUL ORDERS OF COURTS AND/OR PUBLIC AUTHORITIES EFFECTIVE WHERE THE SUBCONTRACT WORK IS TO BE PERFORMED.

EXCLUSIONS			

UNIT / LABOR PRICING			
		\$	

ALTERNATES			
			\$

BOND:

If indicated above, Subcontractor shall furnish Contractor, in form satisfactory to Contractor, duly executed Performance and Payment Bonds, underwritten by a surety or sureties satisfactory to Contractor and authorized to do business in the state in which the Project is located, in the full amount of this Subcontract. The bond premium shall be paid by the Subcontractor and included in the Subcontract Price. Subcontractor's failure to deliver satisfactory bonds or renewals thereof within ten (10) calendar days after demand may be deemed a material breach of this Subcontract.

EXHIBITS AND EXECUTION:

The following **Standard Subcontract Exhibits** (as attached or previously executed in a Master Agreement) are incorporated into this Subcontract as though fully set forth herein:

- **Exhibit A** – Subcontract General Conditions Labor & Materials (If Subcontractor has a previously executed Master Agreement, Exhibit A of the Master Agreement will control)
- **Exhibit B** – McGough Standard Insurance Requirements (If Subcontractor has a previously executed Master Agreement, Exhibit B of the Master Agreement will control)
- **Exhibit C** – Digital Data Protocol (If Subcontractor has a previously executed Master Agreement, Exhibit C of the Master Agreement will control)
- **Exhibit D** – State Specific General Conditions (as attached or not applicable if Subcontractor has a previously executed Master Agreement)
- **Exhibit E** – Workforce Requirements (if applicable)
- **Exhibit G** – McGough Quality Program Requirements

The following **Project Specific Exhibits** (as attached) are incorporated into this Subcontract as though fully set forth herein:

- **Exhibit 1** –
- **Exhibit 2** –
- **Exhibit 3** –
- **Exhibit 4** –
- **Exhibit 5** –
- **Exhibit 6** –

Additionally, the Contract Documents defined in Exhibit A Article A2.1 are also incorporated into this Subcontract as though fully set forth herein. Subcontractor hereby acknowledges that Subcontractor has reviewed and fully understands the foregoing documents.

**STANDARD SUBCONTRACT AGREEMENT
LABOR & MATERIALS**

In executing this Subcontract, Contractor and Subcontractor each individually represents that it has the necessary financial resources to fulfill its obligations under this Subcontract, and each has the necessary corporate approvals to execute this Subcontract and perform the services described herein.

This Subcontract constitutes the entire agreement between the parties hereto and is acknowledged and effective on the date first set forth above. No oral representations or other agreements have been made by Contractor except as stated in this Subcontract.

Subcontractor Name
Subcontractor
By

McGough Construction Co., LLC
Contractor
By , Project Manager of Record
Contractor
By , Project Manager

SAMPLE



Project Name:

McGough Job Number:

Project Address:

Owner:

Attached please find a copy of the subcontract complete in accordance with the Architect's plans and as outlined in the specifications.

Please sign and return one copy via email to the Project Coordinator listed below for our records. The subcontract will be deemed to have been accepted upon the earlier of the execution of the Subcontract or McGough Construction's receipt of your first invoice for work/materials completed for this contract.

This Subcontract may be executed by the Contractor and Subcontractor separately in counterparts which, taken together, shall constitute an original. This subcontract may be executed by facsimile, email or electronic signatures, which shall be deemed to have the same force and effect as an original signature. Whenever this Subcontract is executed in this manner, no changes, alterations, or modifications shall be accepted and both parties agree that the original version of this Subcontract is the only version that is binding.

Please note that McGough Construction will not accept any changes or modifications to the subcontract when it is returned to McGough Construction.

Please arrange to have your insurance carrier or agent furnish us with a Certificate of Insurance for the above referenced project with McGough, Architect and the Owner listed as additional insured. Your minimum coverage must be equal to the amounts shown in Exhibit B attached or previously executed under the Master General Conditions Agreement. All applicable blanks must be filled in. A properly executed certificate of insurance must be on file at our office before any work is commenced at the jobsite.

All payment requests are due at our office no later than the 25th of the month for work completed and stored during that month. Any request received after the 25th will not be considered until the following month. Payment requests can be emailed to invoices@mcgough.com. **Please include job name and contract number on the invoice and email. All subcontract invoices are to include the line item breakdown (at minimum) as indicated in the 'Scope of Work (SOV)' section of the Subcontract. Any invoices not including this information will be rejected.**

Please see below for the McGough project team:

Senior Project Manager	Project Manager	Superintendent
Project Coordinator	Accountant	Project Engineer

Please contact us if you have any questions regarding this subcontract.

Sincerely,

McGough Construction

Contract Date:

Contract Number:

<u>Owner Information:</u>		
Owner Name:	Owner Contact:	Owner Address:

<u>Project Information:</u>	
Project Name:	Project Site:

<u>Architect Information:</u>		
Architect Name:	Architect Contact:	Architect Address:

THIS SUBCONTRACT for the above referenced project, effective the date listed above, is entered into by and between the following Contractor and Subcontractor:

<u>Contractor Information:</u>		
Contractor Name:	Contractor Contact:	Contractor Address:

<u>Subcontractor Information:</u>		
Subcontractor Name:	Subcontractor Contact:	Subcontractor Address:

**STANDARD SUBCONTRACT AGREEMENT
MATERIALS ONLY**

RECITALS:

Contractor has entered into a contract ("**Prime Contract**") with Owner to furnish services, labor, material and equipment for the construction of the Project on the Project Site, pursuant to drawings, specifications, general, supplemental and special conditions, addenda and amendments and other documents (the "**Work**") prepared by ("**Architect**").

Contractor desires to subcontract to the Subcontractor the performance of a portion of the Prime Contract upon terms and conditions set forth herein.

AGREEMENT:

In consideration of their mutual promises and undertakings, the Subcontractor and Contractor agree to the following:

Subcontractor shall furnish and deliver FOB Project Site the necessary scope of work complete, including design services as required, in accordance with the Architect's plans and as outlined in the specifications as issued by Architect, the Prime Contract, and the Contract Documents ("**Subcontract Work**"). The Subcontract Work shall include but not be limited to the following:

SUBCONTRACT PRICE:

For full performance of the Subcontract Work in conformance with the Contract Documents, and all other terms and conditions of this Subcontract, Contractor shall pay the Subcontractor the Contract Price listed below.

SUBCONTRACTOR'S FEE ON CHANGE ORDERS:

The Subcontractor's Fee on Change Orders, including overhead and profit, is equal to the percentage listed below of the Cost of the Work for the Change Order. If the Change Order Cost of the Work is a deductive amount, the Subcontractor's Fee shall be deducted; if the Change Order Cost of the Work is an additive amount, the Subcontractor's Fee shall be added.

\$	Dollars 00/100
-----------	-----------------------

SCOPE OF WORK (SOW)			
Job Number	Phase	Description	Amount

MISCELLANEOUS INFORMATION		
Retainage on progress payments shall be held in the amount of	%	
McGough Standard Insurance Requirements	Included	
Shop Drawings and Engineering	Included	
Subcontractor's Fee on Change Orders <i>(See additional information above)</i>	%	
100% Performance and Payment Bond		

VENDOR GOALS

**STANDARD SUBCONTRACT AGREEMENT
MATERIALS ONLY**

SBE Vendor Goals	
WBE Vendor Goals	
MBE Vendor Goals	
Section 3 Vendor Goals	

DOCUMENTS AND SUPPLEMENTAL INFORMATION (List documents with dates below)	
<i>Extra construction documents will not be available on-site for your field crew to use. Subcontractor is responsible to forward any and all applicable documents received in your office to the field in a timely manner.</i>	
All Division 00 and 01 Specifications	Included

	Included
--	----------

	Included
--	----------

	Included
--	----------

SCHEDULE	
Project Schedule Dated	

SUBCONTRACTOR MANAGEMENT		
Project Work Hours	7:00 AM to 3:30 PM	
Prepare detailed schedule to support McGough provided schedule	Included	
Attend Project Progress Meetings as Requested	Included	
Mandatory attendance at Pull Planning / Weekly Work Planning Sessions as scheduled	Included	Attendance required by Subcontractor Project Manager and Subcontractor Field Foremen
Price Change Order Proposals within five (5) Business Days	Included	
to be Project Manager for the duration of the project	Included	
Coordinate all deliveries with McGough Project Superintendent	Included	

ALSO INCLUDED BUT NOT LIMITED TO:

INCLUSIONS	

COVID-19: SUBCONTRACTOR COMPLIANCE WITH ALL OWNER POLICIES AND REQUIREMENTS, FEDERAL AND STATE LAWS, STATUTES, ORDINANCES, CODES, RULES AND REGULATIONS, MUNICIPAL ORDINANCES AND REGULATIONS, AND LAWFUL ORDERS OF COURTS AND/OR PUBLIC AUTHORITIES EFFECTIVE WHERE THE SUBCONTRACT WORK IS TO BE PERFORMED.

**STANDARD SUBCONTRACT AGREEMENT
MATERIALS ONLY**

--

EXCLUSIONS	

UNIT PRICING		
		\$

ALTERNATES	
	\$

BOND:

If indicated above, Subcontractor shall furnish Contractor, in form satisfactory to Contractor, duly executed Performance and Payment Bonds, underwritten by a surety or sureties satisfactory to Contractor and authorized to do business in the state in which the Project is located, in the full amount of this Subcontract. The bond premium shall be paid by the Subcontractor and included in the Subcontract Price. Subcontractor's failure to deliver satisfactory bonds or renewals thereof within ten (10) calendar days after demand may be deemed a material breach of this Subcontract.

EXHIBITS AND EXECUTION:

The following **Standard Subcontract Exhibits** (*as attached or previously executed in a Master Agreement*) are incorporated into this Subcontract as though fully set forth herein:

- **Exhibit A** – Subcontract General Conditions Materials Only (*If Subcontractor has a previously executed Master Agreement, Exhibit A of the Master Agreement will control*)
- **Exhibit B** – McGough Standard Insurance Requirements (*If Subcontractor has a previously executed Master Agreement, Exhibit B of the Master Agreement will control*)
- **Exhibit C** – Digital Data Protocol (*If Subcontractor has a previously executed Master Agreement, Exhibit C of the Master Agreement will control*)
- **Exhibit D** – State Specific General Conditions (*as attached or not applicable if Subcontractor has a previously executed Master Agreement*)
- **Exhibit E** – Workforce Requirements (*if applicable*)

The following **Project Specific Exhibits** (*as attached*) are incorporated into this Subcontract as though fully set forth herein:

- **Exhibit 1** –
- **Exhibit 2** –
- **Exhibit 3** –
- **Exhibit 4** –
- **Exhibit 5** –
- **Exhibit 6** –

Additionally, the Contract Documents defined in Exhibit A Article A2.1 are also incorporated into this Subcontract as though fully set forth herein. Subcontractor hereby acknowledges that Subcontractor has reviewed and fully understands the foregoing documents.

In executing this Subcontract, Contractor and Subcontractor each individually represents that it has the necessary financial resources to fulfill its obligations under this Subcontract, and each has the necessary corporate approvals to execute this Subcontract and perform the services described herein.

**STANDARD SUBCONTRACT AGREEMENT
MATERIALS ONLY**

This Subcontract constitutes the entire agreement between the parties hereto and is acknowledged and effective on the date first set forth above. No oral representations or other agreements have been made by Contractor except as stated in this Subcontract.

Subcontractor Name
Subcontractor
By

McGough Construction Co., LLC
Contractor
By , Project Manager of Record
Contractor
By , Project Manager

SAMPLE



PROFESSIONAL SERVICES AGREEMENT

Contract Number: 101117-0005

THIS PROFESSIONAL SERVICES AGREEMENT, effective DATE, ("Agreement") is entered into by and between the following:

"Contractor": McGough Construction Co., LLC
2737 Fairview Ave N
St Paul, MN 55113

and **"Consultant":** Consultant Name
Consultant Address
Consultant City, State & Zip

Consultant's Authorized Representative:
Name

Email

"Project": Project Name

"Project Site": Project Site Address

"Owner": Owner Name/Address/City/State/Zip

RECITALS

1. Contractor has entered into a contract ("**Prime Contract**") with Owner to furnish services, labor, material and equipment for the construction of the Project on the Project Site.
2. Contractor desires to subcontract to the Consultant the performance of a portion of the Prime Contract upon terms and conditions set forth herein.

AGREEMENT

In consideration of their mutual promises and undertakings, the Consultant and Contractor agree to the following:

ARTICLE 1 SCOPE OF THE SERVICES

- 1.1 Consultant agrees to perform for Contractor the Services described in **Exhibit A**, including all things necessary or incidental to complete performance of the Services.
- 1.2 The Services performed shall be in strict accord with the requirements listed in **Exhibit A**, and as expeditiously as is consistent with professional skill and care and the orderly progress of the design and construction of the Project.

ARTICLE 2 FEE

- 2.1 As full consideration for performance of the Services, Contractor agrees to pay Consultant as provided for in the Schedule of Fees set forth in **Exhibit B**.
- 2.2 Contractor may order changes in the Services within the general scope of this Agreement, and Consultant shall perform the changes ordered by Contractor. All changes in Services must be authorized in advance by Contractor in a written Change Order signed by Contractor. All requests from Consultant for a Change Order must be made in writing to Contractor within three business days of the discovery of the condition giving rise to the need for the Change Order.

ARTICLE 3 EXHIBITS AND EXECUTION

- 3.1 The following **Standard Professional Services Exhibits** are incorporated into this Agreement as though fully set forth herein:

- **Exhibit A - Scope of Services**
- **Exhibit B - Schedule of Fees**
- **Exhibit C – General Conditions** *(attached or as previously executed in a Master Agreement)*
- **Exhibit D – McGough Insurance Requirements** *(attached or as previously executed in a Master Agreement)*
- **Exhibit E – Digital Data Protocol** *(attached or as previously executed in a Master Agreement)*
- **Exhibit F – State Specific General Conditions** *(as attached or not applicable if Subcontractor has a previously executed Master Agreement)*

The following **Project Specific Exhibits** *(as attached)* are incorporated into this Agreement as though fully set forth herein:

- **Exhibit 1 –**
- **Exhibit 2 –**
- **Exhibit 3 –**
- **Exhibit 4 –**
- **Exhibit 5 –**
- **Exhibit 6 –**

Additionally, the Contract Documents defined in **Exhibit C Article C2.1** are also incorporated into this Agreement as though fully set forth herein. Consultant hereby acknowledges that Consultant has reviewed and fully understands the foregoing documents.

If Consultant has a previously executed Master Agreement, Exhibit C of the Master Agreement will control.

- 3.2 In executing this Agreement, Contractor and Consultant each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement and perform the services described herein.
- 3.3 This Agreement constitutes the entire agreement between the parties hereto and is acknowledged and effective on the date first set forth above. No oral representations or other agreements have been made by Contractor except as stated in this Agreement.

Consultant Name
Consultant
By

McGOUGH CONSTRUCTION COMPANY, LLC.
Contractor
By , Project Manager of Record
Contractor
By , Project Manager

SAMPLE

**EXHIBIT A
 (Scope of Services)**

SCOPE OF WORK (SOW)			
Job Number	Phase	Description	Amount

Estimated Budget Amount based on the above scope of work:

\$	Dollars 00/100
----	----------------

INCLUSIONS	

COVID-19: SUBCONTRACTOR COMPLIANCE WITH ALL OWNER POLICIES AND REQUIREMENTS, FEDERAL AND STATE LAWS, STATUTES, ORDINANCES, CODES, RULES AND REGULATIONS, MUNICIPAL ORDINANCES AND REGULATIONS, AND LAWFUL ORDERS OF COURTS AND/OR PUBLIC AUTHORITIES EFFECTIVE WHERE THE SUBCONTRACT WORK IS TO BE PERFORMED.

EXCLUSIONS	

EXHIBIT B
(Schedule of Fees)

UNIT / LABOR PRICING			
			\$

SAMPLE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

DATE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement (s).

<p>PRODUCER</p> <p style="text-align: center;">(xxx) xxx-xxxx</p> <p>ABC Insurance Agency xxxxxxxxxxxxxxxxx City, State, Zip</p>	<p>CONTACT NAME: PRODUCER NAME PHONE _____ FAX _____ (A/C No. Ext): xxx - xxx - xxxxx (A/C No): xxx - xxx - xxxxx E-MAIL ADDRESS: xxx@xxxxxxxxxxxxxx</p>														
<p>INSURED</p> <p>SAMPLE CONSTRUCTION COMPANY xxxxxxxxxxxxxxxxx City, State, Zip</p> <p>NOTE: Your name shown here must match with the Subcontract Agreement</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr><td>INSURER A:</td><td></td></tr> <tr><td>INSURER B:</td><td></td></tr> <tr><td>INSURER C:</td><td></td></tr> <tr><td>INSURER D:</td><td></td></tr> <tr><td>INSURER E:</td><td></td></tr> <tr><td>INSURER F:</td><td></td></tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A:		INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A:															
INSURER B:															
INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YY)	POLICY EXP (MM/DD/YY)	LIMITS												
	<p>GENERAL LIABILITY</p> <p><input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR. <input type="checkbox"/> _____ <input type="checkbox"/> _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC</p>	Y	Y	ABC123456	01/01/12	01/01/13	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>EACH OCCURRENCE</td><td>\$ 1,000,000</td></tr> <tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$</td></tr> <tr><td>MED EXP (Any one person)</td><td>\$</td></tr> <tr><td>PERSONAL & ADV INJURY</td><td>\$ 1,000,000</td></tr> <tr><td>GENERAL AGGREGATE</td><td>\$ 2,000,000</td></tr> <tr><td>PRODUCTS-COMP/OP AGG</td><td>\$ 2,000,000</td></tr> </table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$	MED EXP (Any one person)	\$	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS-COMP/OP AGG	\$ 2,000,000
EACH OCCURRENCE	\$ 1,000,000																		
DAMAGE TO RENTED PREMISES (Ea occurrence)	\$																		
MED EXP (Any one person)	\$																		
PERSONAL & ADV INJURY	\$ 1,000,000																		
GENERAL AGGREGATE	\$ 2,000,000																		
PRODUCTS-COMP/OP AGG	\$ 2,000,000																		
	<p>AUTOMOBILE LIABILITY</p> <p><input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> _____</p>	Y	Y	DEF123456	01/01/12	01/01/13	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td>\$ 1,000,000</td></tr> <tr><td>BODILY INJURY (Per person)</td><td>\$</td></tr> <tr><td>BODILY INJURY (Per accident)</td><td>\$</td></tr> <tr><td>PROPERTY DAMAGE (Per accident)</td><td>\$</td></tr> </table>	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$				
COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000																		
BODILY INJURY (Per person)	\$																		
BODILY INJURY (Per accident)	\$																		
PROPERTY DAMAGE (Per accident)	\$																		
	<p><input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$ _____</p>	Y	Y	PQR123456	01/01/12	01/01/13	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>EACH OCCURRENCE</td><td>\$ 5,000,000</td></tr> <tr><td>AGGREGATE</td><td>\$</td></tr> <tr><td></td><td>\$</td></tr> </table>	EACH OCCURRENCE	\$ 5,000,000	AGGREGATE	\$		\$						
EACH OCCURRENCE	\$ 5,000,000																		
AGGREGATE	\$																		
	\$																		
	<p>WORKERS COMPENSATION AND EMPLOYERS LIABILITY</p> <p>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below</p> <p style="text-align: center;">Y/N N</p>	N/A	Y	GHI123456	01/01/12	01/01/13	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">WC STATUTORY LIMITS</td> <td style="width: 40%;">OTHER</td> </tr> <tr><td>E.L. EACH ACCIDENT</td><td>\$ 1,000,000</td></tr> <tr><td>E.L. DISEASE-EA EMPLOYEE</td><td>\$ 1,000,000</td></tr> <tr><td>E.L. DISEASE-POLICY LIMIT</td><td>\$ 1,000,000</td></tr> </table>	WC STATUTORY LIMITS	OTHER	E.L. EACH ACCIDENT	\$ 1,000,000	E.L. DISEASE-EA EMPLOYEE	\$ 1,000,000	E.L. DISEASE-POLICY LIMIT	\$ 1,000,000				
WC STATUTORY LIMITS	OTHER																		
E.L. EACH ACCIDENT	\$ 1,000,000																		
E.L. DISEASE-EA EMPLOYEE	\$ 1,000,000																		
E.L. DISEASE-POLICY LIMIT	\$ 1,000,000																		
	Contractors Pollution Liability (Including Mold)		Y	JKL123456	01/01/12	01/01/13	\$1,000,000 / \$2,000,000 (Describe if Claims Made or Per Occurrence) Retro date: XX-XX-XX (Include if a Claims-made Policy)												
	Professional Liability [Include if Required by Contract]	N	Y	MNO123456	01/01/12	01/01/13	\$1,000,000 / \$2,000,000 Retro date: XX-XX-XX (Include if a Claims-made Policy)												

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 [Project Description]; [McGough Entity], its officers, directors & employees and the [Owner/Describe per Contract] are included as Additional Insured's in the above referenced General Liability (for both ongoing & completed operations), Automobile Liability and Umbrella/Excess Liability policies. Such Insurance as is provided to Additional Insured's on the General Liability, Automobile Liability and Umbrella/Excess Liability policies, shall be Primary and Non-contributory with any other insurance available to the Additional Insured's. Waiver of Subrogation in favor of [McGough Entity], [Architect, Owner / Describe per Contract] and each of their agents and employees are included in above referenced General Liability, Automobile Liability, Workers' Compensation/Employers Liability, Umbrella/Excess Liability, Pollution/Mold Liability [and Professional Liability if required]. The Umbrella/Excess Liability policy sits over General Liability, Automobile Liability and Employers Liability. **[ADDITIONAL INSURED ENDORSEMENTS MUST BE ATTACHED TO THIS CERT]**

<p>CERTIFICATE HOLDER</p> <p style="color: red;">McGough Construction Co., LLC 630 First Avenue North, Suite 4 Fargo, ND 58102</p>	<p style="text-align: center;">See Subcontract Exhibit B for further clarification/requirements</p> <p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p style="text-align: center;">AUTHORIZED REPRESENTATIVE <i>Signature Required</i></p>
---	--

Include complete description



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

DATE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement (s).

PRODUCER ABC Insurance Agency xxxxxxxxxxxxxxxx City, State, Zip	(xxx) xxx-xxxx		CONTACT NAME: PRODUCER NAME PHONE (A/C No. Ext): XXX - XXX - XXXX FAX (A/C No): XXX - XXX - XXXX E-MAIL ADDRESS: xxx@xxxxxxxxxxxxx
			INSURER(S) AFFORDING COVERAGE NAIC # INSURER A: INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
INSURED SAMPLE CONSTRUCTION COMPANY xxxxxxxxxxxxxxxx City, State, Zip NOTE: Your name shown here must match with the Subcontract Agreement			

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:
 THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YY)	POLICY EXP (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR. <input type="checkbox"/> _____ <input type="checkbox"/> _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	Y	Y	ABC123456	01/01/12	01/01/13	EACH OCCURRENCE	\$ 1,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> _____	Y	Y	DEF123456	01/01/12	01/01/13	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	\$ 1,000,000 \$ \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$ _____	Y	Y	PQR123456	01/01/12	01/01/13	EACH OCCURRENCE AGGREGATE	\$ 5,000,000 \$ \$
	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	Y	GHI123456	01/01/12	01/01/13	WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT E.L. DISEASE-EA EMPLOYEE E.L. DISEASE-POLICY LIMIT	\$ 1,000,000 \$ 1,000,000 \$ 1,000,000
	Contractors Pollution Liability (Including Mold)		Y	JKL123456	01/01/12	01/01/13	\$1,000,000 / \$2,000,000 (Describe if Claims Made or Per Occurrence)	
	Professional Liability [Include if Required by Contract]	N	Y	MNO123456	01/01/12	01/01/13	\$1,000,000 / \$2,000,000	

Select applicable option(s)

See Subcontract Exhibit B for further clarification/requirements

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 [Project Description]; [McGough Entity], its officers, directors & employees and the [Owner/Describe per Contract] are included as Additional Insured's in the above referenced General Liability (for both ongoing & completed operations), Automobile Liability and Umbrella/Excess Liability policies. Such Insurance as is provided to Additional Insured's on the General Liability, Automobile Liability and Umbrella/Excess Liability policies, shall be Primary and Non-contributory with any other insurance available to the Additional Insured's. Waiver of Subrogation in favor of [McGough Entity], [Architect, Owner / Describe per Contract] and each of their agents and employees are included in above referenced General Liability, Automobile Liability, Workers' Compensation/Employers Liability, Umbrella/Excess Liability, Pollution/Mold Liability [and Professional Liability if required]. The Umbrella/Excess Liability policy sits over General Liability, Automobile Liability and Employers Liability. **[ADDITIONAL INSURED ENDORSEMENTS MUST BE ATTACHED TO THIS CERT]**

CERTIFICATE HOLDER McGough Construction Co., LLC 630 First Avenue North, Suite 4 Fargo, ND 58102	See Subcontract Exhibit B for further clarification/requirements SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Signature Required</i>
--	---

Include complete description



CERTIFICATE OF PREMIUM PAYMENT
WORKFORCE SAFETY & INSURANCE
EMPLOYER SERVICES
SFN 4920 (04/2007)

1600 EAST CENTURY AVENUE, SUITE 1
PO BOX 5585
BISMARCK ND 58506-5585
Telephone 1-800-777-5033
Toll Free Fax 1-888-786-8695
TTY (hearing impaired) 1-800-366-6888
Fraud and Safety Hotline 1-800-243-3331
www.WorkforceSafety.com

SAMPLE

Employer Account Number:

Issued Date:

Expiration Date:

... or evidence of "stop gap" coverage

CERTIFICATE OF PREMIUM PAYMENT

This is to certify that North Dakota Workers Compensation coverage is effective for the employer named on this certificate. Employees of the named employer are entitled to apply for the rights and benefits of Workforce Safety and Insurance(WSI).

Coverage under this certificate extends to North Dakota based employers for their North Dakota exposure. Limited coverage extends beyond the physical boundaries of North Dakota. Contact the Policyholder Services Department of WSI at 1-800-777-5033 for further information on coverage issues or to inquire into the status of the holder of this certificate.

North Dakota Century Code § 65-04-04 requires that each employer post this Certificate of Premium Payment in a conspicuous manner at the workplace. A penalty of \$250 may apply for failure to comply with this requirement.

A Certificate of Premium Payment may be revoked for failure to make required premium payments.

Barry Schumacher

Barry Schumacher
Chief of Employer Services

Class	Classification Description

EXHIBIT A
SUBCONTRACT GENERAL CONDITIONS
(Labor and Materials)

ARTICLE 1
SCOPE OF WORK

A1.1 The Subcontractor is an independent contractor and shall provide and pay for all supervision, labor, materials, tools, equipment, services, utilities, layout, hoisting, protection, scaffolding, appliances, quality assurance, field measurements, shop drawings and samples, and all other items necessary to perform fully this Subcontract in conformance with the Contract Documents (see Article 2) for the installation, completion, and operation of all Subcontract Work. This Subcontract includes: (a) all Subcontract Work shown on or reasonably implied by any of the Contract Documents as if called for or shown on all documents, and (b) all things necessary to complete the Subcontract Work for use for its intended purpose in conformance with the Contract Documents or otherwise customarily provided in Subcontractor's line of Subcontract Work.

ARTICLE 2
CONTRACT DOCUMENTS

A2.1 **Contract Documents.** This Subcontract, including any attachments and exhibits, the Prime Contract and all documents referenced therein, plans, specifications, project manuals, general and supplementary conditions, special conditions, invitations to bidders, instructions to bidders, addenda, bonds, and subsequent modifications or revisions thereto constitute the contract documents ("Contract Documents"). Subcontractor's proposal or bid shall not be considered a Contract Document and shall not limit Subcontractor's obligations hereunder. All Contract Documents are fully incorporated herein by reference. Subcontractor acknowledges that Contractor has made available to Subcontractor all of the above documents, subject to Contractor redacting certain information deemed to be confidential, and Subcontractor shall be responsible for obtaining copies pertinent to its Subcontract Work.

A2.2 **Comparison of Documents.** Subcontractor represents that it has carefully studied and understands the Contract Documents, has obtained clarification of all known inconsistencies, errors, omissions, or other discrepancies in the Contract Documents, and has included in the Subcontract Price all sums required by such clarifications.

A2.3 **Examination of Conditions.** The Subcontractor represents that it: (a) has visited the Project Site; (b) has evaluated the general and local conditions which can affect the Subcontract Work or the cost thereof; and (c) has analyzed all Contract Documents in relation to each other and to the Project Site, the existing or proposed structure, the condition of the soils, the obstacles which may be encountered, and all other conditions having a bearing upon the performance of the Subcontract Work. Subcontractor has included in the Subcontract Price all sums required by such examination and analysis.

A2.4 Agreement to be Bound. The Subcontractor assumes toward the Owner and Contractor and agrees to all obligations, responsibilities, liabilities, and limitations on rights that Contractor assumes toward or agrees to with the Owner by the Prime Contract, insofar as they are applicable to the Subcontract Work. The provisions of this Subcontract shall be in addition to and not in substitution for any of the provisions of the other Contract Documents. To the extent any provision of the Prime Contract is inconsistent with any provision of this Subcontract, this Subcontract shall govern; provided, however, that if the Prime Contract imposes a more stringent or extensive requirement on Subcontractor than this Subcontract, the more stringent or extensive requirement shall prevail. The Subcontractor shall bind its own subcontractors and suppliers to assume toward the Owner, Contractor and Subcontractor the same duties and obligations that the Subcontractor assumes toward Contractor.

ARTICLE 3 PERFORMANCE OF THE SUBCONTRACT WORK

A3.1 Quality of Subcontract Work. Subcontractors shall supervise and direct the Subcontract Work, using best skill and attention, and shall execute the Subcontract Work in a workmanlike manner with qualified, careful, and efficient workers. This includes actively participating in and supporting Contractor’s Quality Management Plan. All the Subcontract Work shall be first quality in materials, installation, and workmanship. If conflicts exist within the Contract Documents as to quantity of material or quality of the Subcontract Work, Subcontractor shall provide the greater quantity or better quality shown or specified with no increase in the Subcontract Price. The Subcontractor shall perform all measurements necessary to ensure proper matching and fitting of the Subcontract Work. Nothing in this section, nor in Exhibit G (if applicable) shall be construed to relieve Subcontractor of liability nor responsibility for its construction means, methods, techniques, sequences, procedures, results, and for coordinating all portions of the Subcontract Work. Subcontractor retains sole responsibility for all such matters.

Contractor may schedule a preconstruction meeting, and if requested by Contractor, Subcontractor shall participate in a preconstruction meeting with Contractor, at a time scheduled by Contractor and shall designate a Quality Manager for their Subcontract Work (“Quality Manager”). Subcontractor shall not change the Subcontractor’s Quality Manager without Contractor’s written consent, which shall not be unreasonably withheld. The Quality Manager shall be empowered to manage all aspects of the quality process on behalf of the Subcontractor. Duties of the Subcontractor’s Quality Manager include, but are not limited to, the following:

1. Preparation and review of the method(s) employed to achieve the desired quality for a Definable Feature of Work, which is a task that is separate and distinct from other tasks and has control requirements and work crews unique to that task. (“DFOW”);
2. Preparation of a project-specific quality plan. At a minimum, each specification section and applicable subsection will be considered a DFOW. The DFOW will be agreed upon during the preconstruction meeting. At a minimum, the project-specific quality plan must address the following:
 - a. The location of each DFOW on the Project Site;
 - b. Acceptable site conditions for the installer, including review and acceptance of the conditions of substrates and adjacent work to allow for performance and/or installation of the Subcontract Work in accordance with the Contract Documents;
 - c. Installation instructions meeting the manufacturer’s requirements and Contract Documents for each DFOW, including coordination between the manufacturer’s requirements and project-specific conditions; and
 - d. Quality requirements for the Subcontract Work, including protection requirements for the finished product upon completion for each DFOW.

3. Preparation of, review and coordination of a consolidated record of issues brought up on the Project for the purpose of tracking the resolution of those issues (“Issues Log”).
4. Preparation of, and continuation of punchlist closeout in accordance with the Contract Documents.

If requested by Contractor, Subcontractor’s Quality Manager shall attend all coordination or other meetings in person.

A3.2 Subcontractor’s Authorized Representative and Progress Meetings. Subcontractor’s Authorized Representative identified in the first page of this Subcontract shall be deemed to be authorized to act on behalf of Subcontractor and to fully bind Subcontractor. Subcontractor shall not change Subcontractor’s Authorized Representative without Contractor’s written consent, which shall not be unreasonably denied. If requested by Contractor, Subcontractor’s Authorized Representative shall attend progress or other meetings in person. If requested by Contractor, Subcontractor shall also require its subcontractors and suppliers to attend such meetings and be represented by a person with adequate authority.

A3.3 Sub-Subcontractors. As soon as practicable after award of this Subcontract and prior to commencement of the Subcontract Work, Subcontractor shall furnish in writing to the Contractor the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Subcontract Work. The Contractor may reply within 14 days to the Subcontractor in writing stating (1) whether the Contractor has reasonable objection to any such proposed person or entity or (2) that the Contractor requires additional time for review. Failure of the Contractor to reply within the 14-day period shall constitute notice of no reasonable objection. The Subcontractor shall not contract with a proposed person or entity to whom the Contractor has made reasonable and timely objection.

A3.4 Responsibility For All Who Are Performing Subcontract Work. The Subcontractor shall be responsible to Contractor for the acts and omissions of its employees, subcontractors and their agents or employees, and other persons performing any of the Subcontract Work. Subcontractor agrees to employ no person whose employment on or in connection with this Subcontract may be objectionable to the Contractor. Subcontractor shall remove any such person when objected to by the Contractor upon reasonable grounds. Subcontractor’s failure to maintain representatives and staff and satisfactory replacements thereof shall be grounds for the Contractor to terminate this Subcontract. The Contractor’s right to approve of, or require replacement of, the Subcontractor’s personnel shall neither impose, or be deemed to imply, any obligation or responsibility of the Contractor for supervision of any personnel of the Subcontractor, nor diminish the Subcontractor’s responsibility for the Subcontract Work.

A3.5 Warranty. The Subcontractor warrants to the Owner and to Contractor that all Subcontract Work, including all materials and equipment furnished under this Subcontract, will be new unless otherwise specified, of the best quality, free from faults and defects, and in strict conformance with the Contract Documents. Subcontractor may not substitute supplies, materials or equipment for items called for by the Contract Documents unless authorized in writing by the Contractor. In all events, the Subcontractor shall provide satisfactory and timely completion of all Subcontract Work, and all Subcontract Work shall conform to the Contract Documents. If required by Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is in addition to and not in limitation of any other warranty or remedy provided by law or the Contract Documents. Subcontractor shall also assume toward the Contractor all warranties and guaranties applicable to the Subcontract Work to which Contractor is bound under the Prime Contract and other Contract Documents.

A3.6 Time. The Contractor may prepare a Project Schedule indicating the dates for the commencement and completion of the various stages of construction. The Project Schedule may be revised within reasonable limits as required by Contractor in accordance with conditions of the Project. Within these limits, Contractor

reserves the right to direct the Subcontractor, without payment of additional compensation, to suspend, delay, accelerate or reschedule from time to time the performance of the Subcontract Work.

A3.6.1 Time is of the essence of this Subcontract. Subcontractor agrees to start Subcontract Work within two (2) work days after notification by Contractor, and to continue diligently in its performance in accordance with the Project Schedule.

A3.6.2 If any part of the Subcontract Work depends, for proper execution or results, upon the Work of Contractor, any other subcontractor, or any other separate contractor at the Project Site, the Subcontractor shall inspect and promptly report to Contractor any apparent deficiencies or defects in such Work. Failure of the Subcontractor to inspect or report objections to the Work of others shall constitute an acceptance of that Work as fit and proper for interface with the Subcontract Work.

A3.6.3 Should the act, omission, or neglect of Contractor interfere or cause delay for the Subcontractor's commencement, prosecution, or completion of the Subcontract Work, then the Subcontractor shall be entitled to an extension of time and an equitable adjustment to the Subcontract Price.

Should any other cause beyond the Subcontractor's control and not due to any fault, neglect, act or omission on its part, interfere or cause delay for the Subcontractor's commencement, prosecution or completion of the Subcontract Work, then the Subcontractor shall be entitled to an extension of time and, to the extent permitted under the Prime Contract, an equitable adjustment to the Subcontract Price. Such extension shall not exceed the period granted to Contractor by the Owner under the Contract Documents for the same cause of delay. Subcontractor shall be entitled to an extension of time only if Subcontractor delivers notice and a request for extension in writing to Contractor within the shorter of (i) seventy-two (72) hours of the commencement of any claimed interference or delay or (ii) forty-eight (48) hours prior to the date on which Contractor must notify the Owner of the delay under the Prime Contract.

A3.6.4 Nothing herein shall preclude the recovery by Contractor of damages for the Subcontractor's delay or default in performance of the Subcontract Work, or for other acts or omissions which cause delay, disruption, or interference for Contractor. Subcontractor shall be liable for all losses, costs, expenses (including attorneys' fees), liabilities, damages and liquidated damages sustained by Contractor or by others for which Contractor may be liable, but only to the extent caused by Subcontractor or any person or entity for whose acts the Subcontractor is liable.

A3.7 **Clean-Up.** The Subcontractor shall keep the Subcontract Work area and surrounding premises clean of debris and rubbish and shall use designated disposal points for all waste materials generated by the execution of the Subcontract Work. If Subcontractor fails to comply with this paragraph, Contractor may, upon twenty-four (24) hours' notice, perform such necessary clean-up and deduct the cost from any amounts due to Subcontractor. In the event Contractor is unable to determine which subcontractor is responsible for clean-up, Contractor may apportion the cost of such clean-up among the subcontractors in such manner as it determines to be equitable.

A3.8 **Protection.** The Subcontractor shall be solely responsible for the protection of its Subcontract Work and for loss or damage, however caused, to materials, tools, equipment, appliances, or other personal property, owned, rented, or used by the Subcontractor in the performance of its Subcontract Work.

A3.9 **Collective Bargaining and Project Labor Agreements.** If Subcontractor is signatory to any Collective Bargaining Agreement, and if the Subcontract Work is in the applicable jurisdictions, the Subcontractor

agrees to comply, for the duration of the Contractor's Work on the Project, with the provisions relating to wages, health and welfare, and premium pay of the current Collective Bargaining Agreement(s) in the building construction industry in the jurisdiction of this project. The agreement of the Subcontractor to comply shall apply only to Subcontract Work performed on the jobsite of the Project by employees of the Subcontractor in the classifications of Subcontract Work listed in the wage schedules of such Collective Bargaining Agreement(s), but shall not apply where the Subcontractor has represented to the Contractor that the Subcontractor has an established building trades collective bargaining relationship covering such classifications of Subcontract Work. Subcontractor shall execute such letters of assent as may be required for any project labor agreements applicable to the Project.

- A3.10 Work Interruption.** The Subcontractor shall not engage in any activities, means or methods which may cause strikes, work stoppages or any disturbances or interferences in connection with the Work, the Project, or the location thereof. Should the Subcontractor fail to comply with any of the foregoing provisions, Contractor shall have the right, in addition to any other remedies provided by the Contract Documents or by law, to terminate this Subcontract under the procedure provided in Article A4.5. Subcontractor shall impose an express provision requiring compliance with this Article on its sub-subcontractors. Subcontractor shall indemnify Contractor against any liability, claim, loss, damage, or expense resulting in any way, directly or indirectly, from its failure to comply with the requirements of this Article, including fees and costs incurred in enforcing this indemnity.
- A3.11 Contractor's Tools and Equipment.** Contractor's tools and equipment may be available to the Subcontractor only at Contractor's sole discretion and on mutually satisfactory terms. In establishing the Subcontract Price, Subcontractor shall not assume that Contractor's tools and equipment will be made available to Subcontractor. The Subcontractor agrees to assume sole responsibility for all claims for loss or damage to persons or property (including property of Contractor, Subcontractor, and others) arising out of or resulting from the Subcontractor's use of Contractor's equipment including, without limitation, scaffolding or the hoisting of all persons and material. The Subcontractor agrees that operators of Contractor's equipment during the period of Subcontractor's use, either singly or with others, shall be deemed loaned servants of the Subcontractor even though actually employed by Contractor or others.
- A3.12 Safety.** The prevention of accidents arising out of Subcontract Work is the Subcontractor's responsibility, even if Contractor establishes a safety program for the entire Project. Subcontractor shall establish a safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Contract Documents. Subcontractor's personnel shall also attend all safety meetings requested by Contractor. The Subcontractor shall be solely responsible for and shall take all reasonable precautions for the safety of and shall provide reasonable protection to prevent damage, injury or loss to its employees and all other persons who may be affected thereby. Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project and shall stop any part of the Subcontract Work which Contractor deems unsafe until corrective measures satisfactory to Contractor shall have been taken. Contractor's failure to stop Subcontractor's unsafe practices shall not relieve Subcontractor of the responsibility therefor. Subcontractor shall orally notify Contractor immediately following any accident and confirm the notice in writing within twenty-four (24) hours after the accident. A detailed written report shall be furnished if requested by the Contractor. Subcontractor shall indemnify Contractor for fines, damages or expenses incurred by the Contractor because of the Subcontractor's failure to comply with safety requirements.
- A3.13 Order to Stop Subcontract Work.** If the Subcontractor fails to carry out the Subcontract Work in accordance with the Contract Documents or fails to correct defective or improper Subcontract Work, Contractor may order the Subcontractor to stop the Subcontract Work, or any portion thereof, until the cause for such order

has been eliminated. Any such order to stop the Subcontract Work will be written and shall not be inferred from oral statements. This right of Contractor to stop the Subcontract Work shall not give rise to any duty on the part of Contractor to exercise this right for the benefit of the Subcontractor or any other person or entity.

A3.14 Correction of Defective Subcontract Work. Without cost to Contractor or the Owner, Subcontractor shall promptly correct improper or defective Subcontract Work, materials or equipment, and other Work affected by such correction which may be discovered within one (1) year from the date of substantial completion of the Project. With respect to the corrected Subcontract Work, the one (1) year correction period shall run from the time of last correction. In addition, the Subcontractor shall provide and honor any guarantee or warranty required by the Contract Documents. Required equipment and system warranty documents and as-built drawings shall be delivered to Contractor within thirty (30) days of completion of the Subcontract Work.

A3.15 Compliance with Laws and Payments of Fees and Taxes. Subcontractor agrees to comply and give notices required by all applicable Federal and State laws, statutes, ordinances, codes, rules and regulations, all municipal ordinances and regulations and lawful orders of public authorities effective where the Subcontract Work under this Subcontract is to be performed, and to pay all costs and expenses connected with such compliance, to pay all fees and taxes, including sales and use taxes, and also pay all taxes imposed by any State or Federal law for any employment insurance, unemployment and old age insurance, including social security, and to furnish all necessary reports and information to the appropriate federal, state and municipal agencies, with respect to all of the foregoing the same as though the Subcontractor was in fact the Contractor, and to hold the Contractor, each other subcontractor and the Owner harmless from any and all losses or damage occasioned by the failure of the Subcontractor to comply with the terms of this paragraph.

A3.16 Termination by the Contractor for Convenience.

A3.16.1 The Contractor may, at any time, terminate the Subcontract for the Contractor's convenience and without cause. Upon receipt of written notice from the Contractor of such termination for the Contractor's convenience, the Subcontractor shall:

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

A3.16.2 Upon such termination, the Subcontractor shall recover, as its sole remedy, payment, including Subcontractor's Fee, for that portion of Subcontract Work properly performed pursuant to the Subcontract prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Contract Documents. The Subcontractor hereby waives and forfeits all other claims for payment and damages including, without limitation, anticipated profits on the Subcontract Work not executed. The Contractor shall be credited for (i) payments previously made to the Subcontractor for the terminated portion of the Work, (ii) claims that the Contractor has against the Subcontractor, and (iii) the cost of the materials, supplies, equipment, or other items that have not been incorporated into the Work that are part of the Subcontract Price.

ARTICLE 4
INSPECTION, DEFAULT AND REMEDIES

- A4.1 Inspection.** The Contractor, the Architect and their authorized representatives shall have the right to inspect and test the Subcontract Work (including without limitation raw materials, fabricated materials, sub-assemblies, components, assemblies, and Subcontract Work in process of fabrication or installation) at all times and places to verify compliance of the Subcontract Work with the Contract Documents and standards of good workmanship.
- A4.2 Access.** The Subcontractor shall provide sufficient and safe facilities for inspection of the Subcontract Work by Contractor, the Architect, and their authorized representatives in the field, at shops, or at any other place where materials or equipment for the Subcontract Work are in the course of preparation, manufacture, treatment, or storage.
- A4.3 Contractor's Benefit.** All inspections and tests are for the sole benefit of Contractor and shall not relieve the Subcontractor of the responsibility to ensure that the Subcontract Work complies with the Contract Documents. Inspections or tests by Contractor or the Architect shall not be construed as constituting or implying acceptance and shall not relieve the Subcontractor of responsibility for any noncompliance, damage to, or loss of the Subcontract Work prior to acceptance, nor in any way affect the continuing rights of Contractor or the Owner after acceptance of the completed Subcontract Work.
- A4.4 Rejection.** In case the Subcontractor shall fail to correct, replace and/or re-execute faulty or defective Subcontract Work done and/or materials furnished under this Subcontract, when and if required by the Contractor, or shall fail to complete or diligently proceed with this Subcontract within the time herein provided for, the Contractor upon three (3) days' written notice to the Subcontractor shall have the right to correct, replace and/or re-execute such faulty or defective Subcontract Work, or to take over this Subcontract and complete same either through its own employees or through a contractor or subcontractor of its choice, and to charge the cost thereof to the Subcontractor, together with any damages caused by a delay in the performance of this Subcontract.
- A4.5 Default and Remedies.** It is mutually agreed that it shall be considered a material breach of this Subcontract if the Subcontractor at any time: (a) fails to supply sufficient qualified workers, appropriate equipment, or proper and sufficient materials; (b) fails to prosecute the Subcontract Work with promptness and diligence in accordance with Contractor's schedule; (c) delays, disrupts or interferes with the Work of Contractor or of any other contractors or subcontractors on the Project; (d) files or has filed against the Subcontractor a petition in bankruptcy or for an agreement for reorganization (Contractor being unwilling to accept and hereby declines performance by any trustee in bankruptcy); (e) has a material change in its financial condition, control or management; (f) transfers material assets; (g) fails to comply with its indemnification obligations to Contractor or fails to procure or maintain required insurance; (h) becomes insolvent or goes into liquidation or dissolution or makes an assignment for the benefit of creditors or otherwise acknowledges insolvency; (i) fails to save and protect Owner and Contractor from all claims and mechanics' liens; except to the extent caused by the uncured failure of the Contractor to make payment when required by the Contract Documents; (j) is in default under any other contract between Contractor and Subcontractor; (k) informs Contractor that Subcontractor is unable or unwilling to complete any portion of the Subcontract Work, or (l) violates any other term of the Contract Documents.

Without limiting any other rights or remedies provided by the Contract Documents or by law, and after forty-eight (48) hours' written notice to the Subcontractor mailed or delivered to its last known address, Contractor may: (a) perform and furnish through itself or through others any labor or materials for the Subcontract Work and deduct the cost thereof from any monies due or to become due to the Subcontractor under this Subcontract; (b) terminate the employment of the Subcontractor for all or any portion of the Subcontract Work; (c) either (1) demand completion of the Subcontract by the Subcontractor's surety, if

any, or (2) enter upon the premises including any trailers, storage units or facilities owned or leased by Subcontractor and take possession, for the purpose of completing the Subcontract Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, all of which the Subcontractor hereby transfers, assigns and sets over to Contractor for such purpose, and employ persons as necessary to complete the Subcontract Work and to provide all the labor, services, materials, equipment and other items required therefor; and/or (d) offset or recoup any payments due to Contractor, pursuant to any other contract between Contractor and Subcontractor.

After default, the Subcontractor shall not be entitled to receive any further payment under this Subcontract until the Subcontract Work shall be wholly completed to the satisfaction of Contractor and shall have been accepted by it, at which time, if the unpaid balance of the amount to be paid under this Subcontract shall exceed the cost incurred by Contractor in completing the Subcontract Work, including all losses, damages, costs and expense (including attorneys' fees) by reason of or resulting from the Subcontractor's default, such excess shall be paid by Contractor to the Subcontractor; but if such cost shall exceed such unpaid balance, then the Subcontractor, and its surety, if any, shall pay the difference to Contractor or any third party to which Contractor assigns its right to seek recovery. In the event that Contractor assigns its right to seek such recovery to an insurer, the parties agree that for the purposes of this section any agreements to waive subrogation shall not apply.

ARTICLE 5 PAYMENT

- A5.1 Application for Payment. *Reserved (see State Specific Exhibit for terms).***
- A5.2 Progress Payments. *Reserved (see State Specific Exhibit for terms).***
- A5.3 Joint or Direct Payments. *Reserved (see State Specific Exhibit for terms).***
- A5.4 Final Payment. *Reserved (see State Specific Exhibit for terms).***
- A5.5 Conditions to Payment. *Reserved (see State Specific Exhibit for terms).***
- A5.6 Effect of Payment. *Reserved (see State Specific Exhibit for terms).***

ARTICLE 6 INDEMNITY AND DEFENSE

A6.1 Definitions.

A6.1.1 "Claims" as used in this Article 6 shall mean any and all claims, costs, liabilities, liens, demands, causes of action, for or on account of any injury to persons, damage to property and the loss of use therefrom (including without limitation, the Subcontract Work), fines, penalties, assessments, or any other loss of whatever kind or nature arising out of or relating to the Project, together with actual attorneys' fees and costs arising out of such Claim and to enforce the provisions of this Article.

A6.1.2 "Indemnitees" as used in this Article 6 shall mean Contractor and its agents and employees, the Owner and its agents and employees, and all others whom Contractor is obligated to defend and/or indemnify under the Contract Documents.

- A6.2 Indemnity. *Reserved (see State Specific Exhibit for terms).***
- A6.3 Defense. *Reserved (see State Specific Exhibit for terms).***

A6.4 Insurance. SUBCONTRACTOR FURTHER AGREES TO OBTAIN, MAINTAIN AND PAY FOR SUCH PROJECT-SPECIFIC INSURANCE AS WILL INSURE THE PROVISIONS OF THIS ARTICLE 6.

A6.5 Remedies. The defense and indemnification obligations under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor, any Subcontractor, or sub-subcontractors, under worker's compensation acts, disability benefit acts or other employee benefit acts. This defense and indemnification obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity or defense which exist in this Subcontract or the Contract Documents or at law. Subcontractor's defense and indemnity obligations shall survive termination of this Subcontract and final payment. In the event of a claim against an Indemnitee, Contractor may, in its sole discretion, reserve, retain or apply any moneys owed to the Subcontractor for purpose of resolving such claim.

ARTICLE 7 CHANGES TO THE SUBCONTRACT WORK

A7.1 Changes. In accordance with the Contract Documents, the Contractor or its authorized representative shall have the right to order in writing the omission or addition of any parts of the Subcontract Work or materials. In the event of a change, a fair adjustment shall be made in the Subcontract Price for such omitted or added Subcontract Work and/or to the time for performance of the Subcontract Work by a written change order signed by Contractor. No extra Subcontract Work shall be allowed or changes made by the Subcontractor, or paid for by the Contractor, unless and until authorized by the Contractor or its authorized representative in writing before the Subcontract Work and/or changes are begun. Subcontractor shall give notice to the Contractor of all claims for extras, for extensions of time and for damage in accordance with the Contract Documents and within forty-eight (48) hours of becoming aware of said potential increase and prior to performing any change in the Subcontract Work. Subcontractor agrees and understands that payment for any such changes, or any extension of time, is expressly conditioned upon strict adherence to the provisions of this Article and Contractor being granted a change from the Owner.

A7.2 Value of Change.

A7.2.1 Lump Sum Change Order: Subcontractor shall submit supporting documentation for costs in such form and detail as required under the Contract Documents or as requested by Contractor within five (5) business days of Contractor's request. Contractor and Subcontractor shall attempt to agree in advance to the total lump sum cost of the Change in Work, which lump sum shall include all compensation to Subcontractor on account of labor, materials, overhead and profit.

A7.2.2 Time and Material Change Order: In the alternative, Contractor may direct Subcontractor to proceed with the change on a "time and material basis." If so directed by Contractor, compensation shall be based upon the Cost of the Work of the change plus Subcontractor's Fee. "Cost of the Work" if not defined in the Prime Contract shall be (a) reasonable cost of labor, including social security, unemployment insurance, and fringe benefits required by agreement or custom, Workers' Compensation Insurance and bond premiums (if any), (b) reasonable cost of materials, including sales tax and the cost of delivery, and (c) reasonable rental value of equipment and machinery obtained and used specifically for such changed work. All such time and material work shall be undertaken on an "open book" basis, and Contractor and its representatives and agents shall be entitled to copy and audit any and all of Subcontractor's records related to such work, including all

time cards, purchase orders, invoices, cancelled checks and other records related to the Cost of the Work incurred and/or paid.

- A7.3 Proceeding with Subcontract Work.** Notwithstanding any disputes or disagreements over the changed Subcontract Work or over the sum of the equitable adjustments above, the Subcontractor nevertheless shall proceed promptly to perform and complete the Subcontract Work as changed.
- A7.4 Verbal Changes Ineffective.** If Subcontractor makes any changes in the Subcontract Work without written direction from Contractor, Subcontractor will not be paid for that changed Subcontract Work, even if it received verbal direction from Contractor or any form of direction, written or otherwise, from Owner or any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses (including attorneys' fees), damages or liability arising out of any such change it makes without written direction from Contractor.

ARTICLE 8 DISPUTE AVOIDANCE AND RESOLUTION

- A8.1 Cooperation.** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Contractor and Subcontractor each commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays, and disruptions to the Work.
- A8.2 Meeting of Field and Senior Representatives.** Contractor and Subcontractor will first attempt to resolve disputes or disagreements at the field level through discussions between Subcontractor's Authorized Representative and Contractor's representative. If the dispute or disagreement cannot be so resolved, Senior Representatives of Contractor and Subcontractor, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than fifteen (15) days after such a request is made, to attempt to resolve such dispute or disagreement. "Senior Representatives" shall mean the President, CFO, COO, Executive Vice President, or similar officer or executive who is not involved in day-to-day management of the Project. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.
- A8.3 Contractor to Make Initial Decision on Disputes.** If the dispute or disagreement has not been resolved as a result of the meeting of the Senior Representatives, or if no meeting of the Senior Representatives occurs for any reason, Contractor shall initially decide the dispute or disagreement. Contractor shall reduce its decision to writing and furnish a copy thereof to Subcontractor. Contractor's decision shall be final and conclusive unless Subcontractor advises Contractor in writing within seven (7) business days of receiving the decision of the bases for its disagreement with the decision. Subcontractor agrees that if it does not contest the Contractor's decision within the time and in the manner required under this Section A8.3, Contractor's decision shall be final, binding, and conclusive and the Subcontractor shall be deemed to have waived any right to contest the decision. Contractor decisions properly contested by Subcontractor shall be resolved in accordance with Section A8.4.
- A8.4 Method of Dispute Resolution.** Claims and disputes between Contractor and Subcontractor shall be resolved as follows:
- A8.4.1** All disputes between Contractor and Subcontractor that do not in any way involve the Owner, the Owner's design, the Architect, and/or other consultants of the Owner and/or Architect shall be resolved in a court of competent jurisdiction.

A8.4.2 In the event any dispute or claim between Contractor and Subcontractor which directly or indirectly involves the Owner, the Owner's design, the Architect and/or other consultants of the Owner and/or Architect, or in the event of any dispute or claim between Contractor and Subcontractor caused by or arising out of conduct for which the Owner may be responsible, Subcontractor agrees to be bound to Contractor and Contractor agrees to be bound to Subcontractor to the same extent the Contractor is bound to Owner by the terms of the Prime Contract and by all procedures and resulting decisions, findings, determinations and/or awards made thereunder by the person or entity so authorized in the Prime Contract, or by an administrative agency, board, court of competent jurisdiction, or arbitration. The Contractor's good faith determination of whether any Subcontractor claim arises out of the Prime Contract is one for which the Owner may be responsible, shall be final and conclusive. If any dispute or claim of Subcontractor is prosecuted or defended by Contractor together with any of Contractor's disputes or claims, and Subcontractor is not directly a party, Subcontractor agrees to cooperate fully with Contractor and to furnish all documents, statements, witnesses and other information required by the Contractor for such purpose and shall pay or reimburse Contractor for all expenses and costs, including reasonable attorneys' fees incurred in connection therewith, to the extent of Subcontractor's interest in such claim or dispute.

A8.4.3 Subcontractor agrees to be bound by the procedure and final determination as specified in the Prime Contract and, unless prohibited under applicable state statutes, agrees it will not take, or will stay or suspend, any other action with respect to such claims (including, but not limited to, actions commenced pursuant to Federal Miller Act, lien statutes or other state bond or retainage act) and will pursue no independent litigation with respect thereto, pending final determination of any resolution procedure between Owner and Contractor, which will be binding on Subcontractor. Subcontractor's timely presentation, cooperation, and participation in any determination of a dispute under the Prime Contract, including any and all appeals under the dispute provision(s) of the Prime Contract and Subcontractor's timely payment of its share of the claim pursuant costs shall be conditions precedent to pursuit of any action by Subcontractor against Contractor with respect to any such claim or dispute. It is expressly understood and agreed that as to any and all claims asserted by Subcontractor in connection with this Project arising from actions of or fault of the Owner, the Contractor shall not be liable to the Subcontractor for any greater amount than Owner is liable to Contractor, less any mark ups or costs incurred by the Contractor. As to any claims asserted by the Subcontractor for or on account of acts or omissions of the Owner, or its agents or design professionals, at the sole option of Contractor, Subcontractor agrees to prosecute such claims in Contractor's name. Subcontractor shall have full responsibility for the preparation and presentation of such claims and shall bear all expense thereof, including attorneys' fees.

A8.5 **Joinder in Related Proceedings.** In the event Contractor is involved in a separate arbitration, litigation, mediation or other legal proceeding in which any aspect of the Subcontractor's Work or entitlement to payment is at issue, or questions of law or fact common to the Subcontractor's performance under the Subcontract are involved; or, if complete relief cannot be afforded in such proceeding without the Subcontractor's participation therein, Subcontractor hereby consents, upon written demand by Contractor, to its consolidation or joinder in that proceeding to the applicability of any rules or procedures applicable to such proceeding; and hereby waives any objections to the location or forum in which the proceeding is pending. In the event Subcontractor has initiated litigation against Contractor at the time Contractor's demand for consolidation or joinder is received, and that proceeding cannot be consolidated with the proceeding in which the Contractor is involved, Subcontractor agrees to dismiss or, in the event dismissal would prejudice Subcontractor's rights, stay the litigation.

A8.6 Governing Law, Jurisdiction and Venue. This Subcontract shall be governed by and construed in accordance with the laws of the state where the Project is located. Subject to Section A8.4, for any action or proceeding involving claims and disputes between Contractor and Subcontractor arising out of or in connection with the Subcontract or the Work, Contractor and Subcontractor expressly and unconditionally: (a) agree that the venue for litigation shall be at the place where the Project is located; and (b) waive the right to a trial by jury in the action or proceeding.

A8.7 Continued Performance Required. Subcontractor acknowledges the importance of performing and completing the Work and its other obligations under the Subcontract in a timely manner. Subcontractor agrees that its rights in connection with any claim or dispute with Contractor in connection with the Subcontract shall be determined as provided in this Article 8 or elsewhere in the Contract Documents, and that it shall not be entitled to suspend or otherwise delay its performance and completion of the Subcontract Work or the performance of its other obligations under the Subcontract based on any alleged breach by Contractor or claim or dispute between the parties, regardless of whether such breach, claim or dispute is the subject of dispute resolution between Contractor and Subcontractor.

ARTICLE 9 ELECTRONIC FILE SHARING

A9.1 Electronic File Sharing. AIA Document E201 – 2007 Digital Data Protocol Exhibit is incorporated into this Agreement.

ARTICLE 10 BONDS

If payment and performance bonds are required under the Subcontract, and are not furnished with this Contract, Contractor may, at any time prior to or during performance of this Subcontract, demand that Subcontractor obtain and furnish payment and performance bonds in the full amount of this Subcontract underwritten by a surety or sureties satisfactory to Contractor and authorized to do business in the state in which the Project is located. Subcontractor shall notify Contractor of the bond premium and pay such amount directly. Contractor shall reimburse Subcontractor for the commercially reasonable cost of the bond premium. Subcontractor's failure to deliver satisfactory bonds or renewals thereof within ten (10) calendar days after demand may be deemed a material breach of this Subcontract.

ARTICLE 11 OTHER PROVISIONS

A11.1 Rights Cumulative. All of Contractor's remedies herein are cumulative and in addition to all other remedies at law or in equity.

A11.2 Entire Agreement. This Subcontract comprises the entire agreement between the parties hereto and is effective on the date set forth above. No other agreement, representation or understanding concerning the same has been made and no oral statement, understanding or agreement shall affect the terms hereof.

A11.3 Severability. To the best knowledge and belief of the parties, this Subcontract contains no provision that is contrary to federal or state law, ruling or regulation. However, if any provision of this Subcontract shall conflict with any such law, ruling or regulation, then such provision shall continue in effect only to the extent permissible. In the event any provision is thus inoperative, the remaining provisions shall, nevertheless, remain in full force and effect.

- A11.4 Successors.** This Subcontract shall be binding on and inure to the benefit of the heirs, successors and assigns of the parties hereto.
- A11.5 Non-Waiver.** This Subcontract may not be changed or amended, and no provision may be waived by Contractor except in writing signed by Contractor's authorized officers or agents. If Contractor does not insist in any instance upon strict compliance with any of the provisions of this Subcontract, or exercise any options provided, this shall not be construed as a waiver of its right to thereafter require such compliance or to exercise such option.
- A11.6 Notice.** Any notice required to be given by the terms and provisions of the Subcontract or any laws, or which either party may desire to give hereunder, either by Contractor or Subcontractor, shall be in writing and shall be personally delivered, forwarded by registered or certified mail (return receipt requested), sent by overnight delivery service, or by facsimile, and shall be addressed to the representatives as described above at the address stated on the first page of this Subcontract. Either party may change the address to which any notice referred to herein is to be sent by giving written notice of such change of address to the other party in the manner provided above. Notice personally delivered, sent by overnight delivery service, or sent by facsimile shall be effective on the date of delivery. Notice given by certified mail shall be effective as of the earlier of (i) date of receipt, or (ii) three days after mailing, properly addressed and postage prepaid.
- A11.7 Infringement.** The Subcontractor shall pay all royalties and license fees and shall defend all suits or claims for infringement of any patent, trademark or copyright arising out of the Subcontract Work.
- A11.8 Assignment and Subletting.** This Subcontract shall not be assignable without the prior written consent of Contractor, nor shall the whole or any part of this Subcontract be sublet without prior written consent. Any such assignment or subletting without prior written consent shall be void and of no effect and shall vest no right or right of action in the assignee or Subcontractor against Contractor.
- A11.9 Sexual Harassment.** Subcontractor shall implement a policy and procedures to prohibit sexual harassment by any employee, subcontractor, or agent. Any instance of such conduct will be subject to timely and appropriate action by Contractor, including, but not limited to, immediate termination of the Subcontract.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:

- a. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;
- b. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or,
- c. that conduct, or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile or offensive employment, public accommodations, public services, educational or housing environment.

The prohibition extends to all persons at the Project Site and includes conduct or communications to pedestrians or drivers using sidewalks or streets near the Project Site, as well as persons employed in nearby businesses.

A11.10 Drug and Alcohol Testing. Contractor shall be permitted to perform drug/alcohol testing of subcontractors, their employees, and agents, to meet legal or owner requirements or pursuant to the Contractor's adopted written drug and alcohol testing policy including, but not limited to, reasonable suspicion testing following an accident or injury. Copies of the Contractor's drug and alcohol testing policy are on file with the Contractor and are incorporated by reference and made a part of this Agreement. Possessing or consuming alcoholic beverages, illegal or unauthorized drugs or controlled substances while performing on the Project Site (including offices, parking lots, all work locations, desks, lockers, living areas, restrooms, break rooms and any motor vehicle, vessel or aircraft engaged in business in behalf of the Contractor) is strictly prohibited. Contractor prohibits all employees and subcontractors and their employees and agents from reporting to work while under the influence of illegal or unauthorized drugs or alcohol regardless of when or where the substance entered the person's system.

A11.11 Hazardous Waste Materials. The Municipal, State and Federal Pollution Control Agencies have published a list of materials that are designated hazardous. If Subcontractor intends to use any of these materials on this project, they must be used in accordance with applicable regulations. Said materials and containers must be removed from the site when Subcontract Work has been completed. HAZARDOUS MATERIALS AND CONTAINERS MUST NOT BE DISPOSED OF IN THE JOB DUMPSTERS. Subcontractor shall notify all job personnel of this requirement. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, other Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Subcontract Work in the affected area if in fact the material or substance presents the risk of bodily injury or death, and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

In the event the Subcontractor encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl (PCBs), or other hazardous materials, the Subcontractor shall stop work in the area affected and immediately report the condition to the Contractor in writing, with a copy of the report for the Owner and the Architect. Work in the area affected shall resume promptly after the Owner or qualified contractors retained by the Owner have certified that the hazardous materials have been removed or rendered harmless by proper enclosure or other appropriate techniques.

A11.12 Concealed Weapons. Contractor prohibits all employees and subcontractors and their employees or agents from carrying or possessing firearms while acting in the course and scope of employment. Violation of this policy may result in termination of the Subcontractor.

A11.13 Advertising. No advertising signs will be allowed on the jobsite.

A11.14 Photographs. No photographs, videos, CDs, multimedia, or images of any kind are allowed to be taken without the express written permission of the Job Superintendent.

A11.15 Helmets, Safety Glasses, and Gloves. Helmets and ANSI-approved safety glasses must be worn at all times by everyone, including Contractor's and subcontractors' personnel and visitors, when working on or visiting the jobsites in accordance with McGough's Health and Safety Program.

A minimum of Class C Type II Helmet is required on all McGough projects. The helmets must meet ANSI Z89 (Type II) performance standards 4.2.1.2 (front energy absorption), 4.2.1.3 (side energy absorption), 4.2.1.4 (rear energy absorption), 4.2.3 (retention system strength), and 4.2.4 (retention system effectiveness).

Workers engaged in electrical work, including but not limited to electricians, lineworkers, and maintenance technicians, must wear ANSI Z89 Class E Type II helmets to protect the potential risk of electrical hazards. Workers who may be exposed to chemical hazards are required to wear Class E Type II helmets.

Contractors', vendors', and subcontractors' workers must use the appropriate gloves for their assigned tasks and the specific hazards encountered. A minimum level of A3 cut-resistance gloves are required for all workers. Visitors not performing work, such as owner representatives or tour groups, are not required to wear gloves.

A11.16 Cranes and Hoisting. Subcontractor shall comply with the OSHA Crane Standard (29 CFR Part 1926, Cranes and Derricks in Construction; Final Rule) and shall provide Contractor with documented evidence that demonstrates that these requirements are in compliance with the OSHA standard for all operators and riggers. All crane operators will provide proof of certification by a nationally recognized and accredited certification program as required by the National Commission for the Certification of Crane Operators (NCCCO).

A11.17 Fall Protection. The Subcontractor shall comply with six (6) foot fall protection policy. This applies to all leading edge work activities.

A11.18 Smoking. No smoking will be allowed on this jobsite or its surrounding grounds unless otherwise specified by the Job Superintendent.

A11.19 Neutral Interpretation. The parties expressly agree that both parties have had the opportunity to negotiate and to obtain assistance of counsel in reviewing this Agreement prior to execution. This Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

A11.20 Counterparts. This Subcontract may be executed by the Contractor and Subcontractor separately in counterparts which, taken together, shall constitute an original. This subcontract may be executed by facsimile, email, or electronic signatures, which shall be deemed to have the same force and effect as an original signature. Whenever this Subcontract is executed in this manner, no changes, alterations, or modifications shall be accepted and both parties agree that the original version of this Subcontract is the only version that is binding.

[END OF DOCUMENT]

EXHIBIT A
SUBCONTRACT GENERAL CONDITIONS
(Materials Only)

ARTICLE 1
SCOPE OF WORK

A1.1 The Subcontractor is an independent contractor and shall provide and pay for all supervision, materials, tools, equipment, services, utilities, layout, hoisting, protection, scaffolding, appliances, quality assurance, field measurements, shop drawings and samples, and all other items necessary to perform fully this Subcontract in conformance with the Contract Documents (see Article 2) for the completion and operation of all Subcontract Work. This Subcontract includes: (a) all Subcontract Work shown on or reasonably implied by any of the Contract Documents as if called for or shown on all documents, and (b) all things necessary to complete the Subcontract Work for use for its intended purpose in conformance with the Contract Documents or otherwise customarily provided in Subcontractor's line of Subcontract Work.

ARTICLE 2
CONTRACT DOCUMENTS

- A2.1** **Contract Documents.** This Subcontract, including any attachments and exhibits, the Prime Contract and all documents referenced therein, plans, specifications, project manuals, general and supplementary conditions, special conditions, invitations to bidders, instructions to bidders, addenda, bonds, and subsequent modifications or revisions thereto constitute the contract documents ("**Contract Documents**"). Subcontractor's proposal or bid shall not be considered a Contract Document and shall not limit Subcontractor's obligations hereunder. All Contract Documents are fully incorporated herein by reference. Subcontractor acknowledges that Contractor has made available to Subcontractor all of the above documents, subject to Contractor redacting certain information deemed to be confidential, and Subcontractor shall be responsible for obtaining copies pertinent to its Subcontract Work.
- A2.2** **Comparison of Documents.** Subcontractor represents that it has carefully studied and understands the Contract Documents, has obtained clarification of all known inconsistencies, errors, omissions or other discrepancies in the Contract Documents, and has included in the Subcontract Price all sums required by such clarifications.
- A2.3** **Examination of Conditions.** The Subcontractor represents that it: (a) has visited the Project Site; (b) has evaluated the general and local conditions which can affect the Subcontract Work or the cost thereof; and (c) has analyzed all Contract Documents in relation to each other and to the Project Site, the existing or proposed structure, the condition of the soils, the obstacles which may be encountered, and all other conditions having a bearing upon the performance of the Subcontract Work. Subcontractor has included in the Subcontract Price all sums required by such examination and analysis.
- A2.4** **Agreement to be Bound.** The Subcontractor assumes toward the Owner and Contractor and agrees to all obligations, responsibilities, liabilities, and limitations on rights that Contractor assumes toward or agrees to with the Owner by the Prime Contract, insofar as they are applicable to the Subcontract Work. The provisions of this Subcontract shall be in addition to and not in substitution for any of the provisions of the other Contract Documents. To the extent any provision of the Prime Contract is inconsistent with any provision of this Subcontract, this Subcontract shall govern; provided, however, that if the Prime Contract imposed a more stringent or extensive requirement on Subcontractor than this Subcontract,

the more stringent or extensive requirement shall prevail. The Subcontractor shall bind its own subcontractors and suppliers to assume toward the Owner, Contractor and Subcontractor the same duties and obligation that the Subcontractor assumes toward Contractor.

ARTICLE 3 PERFORMANCE OF THE SUBCONTRACT WORK

- A3.1 Quality of Subcontract Work.** The Subcontractor shall supervise and direct the Subcontract Work, using its best skill and attention, and shall execute the Subcontract Work in a workmanlike manner. All the Subcontract Work shall be first quality in materials and workmanship. If conflicts exist within the Contract Documents as to quantity of material or quality of the Subcontract Work, Subcontractor shall provide the greater quantity or better quality shown or specified with no increase in the Subcontract Price. The Subcontractor shall perform all measurements necessary to ensure the proper matching and fitting of the Subcontract Work. Incompetent or careless workmanship shall not be permitted by the Subcontractor. The Subcontractor shall be solely responsible for all construction means, methods, techniques, sequences, procedures, and results, and for coordinating all portions of the Subcontract Work.
- A3.2 Subcontractor’s Authorized Representative and Progress Meetings.** Subcontractor’s Authorized Representative identified in the first page of this Subcontract shall be deemed to be authorized to act on behalf of Subcontractor and to fully bind Subcontractor. Subcontractor shall not change Subcontractor’s Authorized Representative without Contractor’s written consent, which shall not be unreasonably denied. If requested by Contractor, Subcontractor’s Authorized Representative shall attend progress or other meetings in person. If requested by Contractor, Subcontractor shall also require its subcontractors and suppliers to attend such meetings and be represented by a person with adequate authority.
- A3.3 Sub-Subcontractors.** As soon as practicable after award of this Subcontract and prior to commencement of the Subcontract Work, Subcontractor shall furnish in writing to the Contractor the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Subcontract Work. The Contractor may reply within 14 days to the Subcontractor in writing stating (1) whether the Contractor has reasonable objection to any such proposed person or entity or (2) that the Contractor requires additional time for review. Failure of the Contractor to reply within the 14-day period shall constitute notice of no reasonable objection. The Subcontractor shall not contract with a proposed person or entity to whom the Contractor has made reasonable and timely objection.
- A3.4 Responsibility For All Who Are Performing Subcontract Work.** The Subcontractor shall be responsible to Contractor for the acts and omissions of its employees, subcontractors and their agents or employees, and other persons performing any of the Subcontract Work. Subcontractor agrees to employ no person whose employment on or in connection with this Subcontract may be objectionable to the Contractor. Subcontractor shall remove any such person when objected to by the Contractor upon reasonable grounds. Subcontractor’s failure to maintain representatives and staff and satisfactory replacements thereof shall be grounds for the Contractor to terminate this Subcontract. The Contractor’s right to approve of, or require replacement of, the Subcontractor’s personnel shall neither impose, or be deemed to imply, any obligation or responsibility of the Contractor for supervision of any personnel of the Subcontractor, nor diminish the Subcontractor’s responsibility for the Subcontract Work.
- A3.5 Warranty.** The Subcontractor warrants to the Owner and to Contractor that all Subcontract Work, including all materials furnished under this Subcontract, will be new unless otherwise specified, of the

best quality, free from faults and defects, and in strict conformance with the Contract Documents. Subcontractor may not substitute supplies or materials for items called for by the Contract Documents unless authorized in writing by the Contractor. In all events, the Subcontractor shall provide satisfactory and timely completion of all Subcontract Work, and all Subcontract Work shall conform to the Contract Documents. If required by Contractor, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials. This warranty is in addition to and not in limitation of any other warranty or remedy provided by law or the Contract Documents. Subcontractor shall also assume toward the Contractor all warranties and guaranties applicable to the Subcontract Work to which Contractor is bound under the Prime Contract and other Contract Documents.

A3.6 **Time.** The Contractor may prepare a Project Schedule indicating the dates for the commencement and completion of the various stages of construction. The Project Schedule may be revised within reasonable limits as required by Contractor in accordance with conditions of the Project. Within these limits, Contractor reserves the right to direct the Subcontractor, without payment of additional compensation, to suspend, delay, accelerate or reschedule from time to time the performance of the Subcontract Work. Subcontractor agrees to furnish the material called for in this Subcontract promptly when requested by the Contractor so that the Project will not be delayed waiting for such material. Subcontractor agrees to complete the delivery of material covered by this Subcontract at such times and in such manner that the Contractor can timely complete all of the work included in the Prime Contract.

A3.6.1 Time is of the essence of this Subcontract. Subcontractor agrees to start Subcontract Work within two (2) workdays after notification by Contractor, and to continue diligently in its performance in accordance with the Project Schedule.

A3.6.2 Should the act, omission, or neglect of Contractor interfere or cause delay for the Subcontractor's commencement, prosecution, or completion of the Subcontract Work, then the Subcontractor shall be entitled to an extension of time and an equitable adjustment to the Subcontract Price.

Should any other cause beyond the Subcontractor's control and not due to any fault, neglect, act, or omission on its part, interfere or cause delay for the Subcontractor's commencement, prosecution, or completion of the Subcontract Work, then the Subcontractor shall be entitled to an extension of time and, to the extent permitted under the Prime Contract, an equitable adjustment to the Subcontract Price. Such extension shall not exceed the period granted to Contractor by the Owner under the Contract Documents for the same cause of delay. Subcontractor shall be entitled to an extension of time only if Subcontractor delivers notice and a request for extension in writing to Contractor within the shorter of (i) seventy-two (72) hours of the commencement of any claimed interference or delay or (ii) forty-eight (48) hours prior to the date on which Contractor must notify the Owner of the delay under the Prime Contract.

A3.6.3 Nothing herein shall preclude the recovery by Contractor of damages for the Subcontractor's delay or default in performance of the Subcontract Work, or for other acts or omissions which cause delay, disruption, or interference for Contractor. Subcontractor shall be liable for all losses, costs, expenses (including attorneys' fees), liabilities, damages and liquidated damages sustained by Contractor or by others for which Contractor may be liable, but only to the extent caused by Subcontractor or any person or entity for whose acts the Subcontractor is liable.

- A3.7 Collective Bargaining and Project Labor Agreements.** If Subcontractor is signatory to any Collective Bargaining Agreement, and if the Subcontract Work is in the applicable jurisdictions, the Subcontractor agrees to comply, for the duration of the Contractor's Work on the Project, with the provisions relating to wages, health and welfare, and premium pay of the current Collective Bargaining Agreement(s) in the building construction industry in the jurisdiction of this project. The agreement of the Subcontractor to comply shall apply only to Subcontract Work performed on the jobsite of the Project by employees of the Subcontractor in the classifications of Subcontract Work listed in the wage schedules of such Collective Bargaining Agreement(s) but shall not apply where the Subcontractor has represented to the Contractor that the Subcontractor has an established building trades collective bargaining relationship covering such classifications of Subcontract Work. Subcontractor shall execute such letters of assent as may be required for any project labor agreements applicable to the Project.
- A3.8 Work Interruption.** The Subcontractor shall not engage in any activities, means or methods which may cause strikes, work stoppages or any disturbances or interferences in connection with the Work, the Project, or the location thereof. Should the Subcontractor fail to comply with any of the foregoing provisions, Contractor shall have the right, in addition to any other remedies provided by the Contract Documents or by law, to terminate this Subcontract under the procedure provided in Article 4. Subcontractor shall impose an express provision requiring compliance with this Article on its sub-subcontractors. Subcontractor shall indemnify Contractor against any liability, claim, loss, damage, or expense resulting in any way, directly or indirectly, from its failure to comply with the requirements of this Article, including fees and costs incurred in enforcing this indemnity.
- A3.9 Safety.** The prevention of accidents arising out of Subcontract Work is the Subcontractor's responsibility, even if Contractor establishes a safety program for the entire Project. Subcontractor shall establish a safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Contract Documents. Subcontractor's personnel shall also attend all safety meetings requested by Contractor. The Subcontractor shall be solely responsible for and shall take all reasonable precautions for the safety of and shall provide reasonable protection to prevent damage, injury or loss to its employees and all other persons who may be affected thereby. Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project and shall stop any part of the Subcontract Work which Contractor deems unsafe until corrective measures satisfactory to Contractor shall have been taken. Contractor's failure to stop Subcontractor's unsafe practices shall not relieve Subcontractor of the responsibility therefor. Subcontractor shall orally notify Contractor immediately following any accident and confirm the notice in writing within twenty-four (24) hours after the accident. A detailed written report shall be furnished if requested by the Contractor. Subcontractor shall indemnify Contractor for fines, damages or expenses incurred by the Contractor because of the Subcontractor's failure to comply with safety requirements.
- A3.10 Order to Stop Subcontract Work.** If the Subcontractor fails to carry out the Subcontract Work in accordance with the Contract Documents or fails to correct defective or improper Subcontract Work, Contractor may order the Subcontractor to stop the Subcontract Work, or any portion thereof, until the cause for such order has been eliminated. Any such order to stop the Subcontract Work will be written and shall not be inferred from oral statements. This right of Contractor to stop the Subcontract Work shall not give rise to any duty on the part of Contractor to exercise this right for the benefit of the Subcontractor or any other person or entity.

A3.11 Correction of Defective Subcontract Work. Without cost to Contractor or the Owner, Subcontractor shall promptly correct improper or defective Subcontract Work or materials, and other Work affected by such correction which may be discovered within one (1) year from the date of substantial completion of the Project. With respect to the corrected Subcontract Work, the one (1) year correction period shall run from the time of last correction. In addition, the Subcontractor shall provide and honor any guarantee or warranty required by the Contract Documents. Any warranty documents required under the Contract Documents shall be delivered to Contractor within thirty (30) days of completion of the Subcontract Work.

A3.12 Compliance with Laws and Payments of Fees and Taxes. Subcontractor agrees to comply and give notices required by all applicable Federal and State laws, statutes, ordinances, codes, rules and regulations, all municipal ordinances and regulations and lawful orders of public authorities effective where the Subcontract Work under this Subcontract is to be performed, and to pay all costs and expenses connected with such compliance, to pay all fees and taxes, including sales and use taxes, and also pay all taxes imposed by any State or Federal law for any employment insurance, unemployment and old age insurance, including social security, and to furnish all necessary reports and information to the appropriate federal, state and municipal agencies, with respect to all of the foregoing the same as though the Subcontractor was in fact the Contractor, and to hold the Contractor, each other subcontractor and the Owner harmless from any and all losses or damage occasioned by the failure of the Subcontractor to comply with the terms of this paragraph.

A3.13 Termination by the Contractor for Convenience.

A3.13.1 The Contractor may, at any time, terminate the Subcontract for the Contractor's convenience and without cause. Upon receipt of written notice from the Contractor of such termination for the Contractor's convenience, the Subcontractor shall:

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

A3.13.2 Upon such termination, the Subcontractor shall recover, as its sole remedy, payment, including Subcontractor's Fee, for that portion of Subcontract Work properly performed pursuant to the Subcontract prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Contract Documents. The Subcontractor hereby waives and forfeits all other claims for payment and damages including, without limitation, anticipated profits on the Subcontract Work not executed. The Contractor shall be credited for (i) payments previously made to the Subcontractor for the terminated portion of the Work, (ii) claims that the Contractor has against the Subcontractor, and (iii) the cost of the materials, supplies, equipment, or other items that have not been incorporated into the Work that are part of the Subcontract Price.

**ARTICLE 4
INSPECTION, DEFAULT AND REMEDIES**

- A4.1 Inspection.** The Contractor, the Architect and their authorized representatives shall have the right to inspect and test the Subcontract Work (including without limitation raw materials, fabricated materials, sub-assemblies, components, assemblies, and Subcontract Work in process of fabrication) at all times and places to verify compliance of the Subcontract Work with the Contract Documents and standards of good workmanship.
- A4.2 Access.** The Subcontractor shall provide sufficient and safe facilities for inspection of the Subcontract Work by Contractor, the Architect, and their authorized representatives in the field, at shops, or at any other place where materials or equipment for the Subcontract Work are in the course of preparation, manufacture, treatment, or storage.
- A4.3 Contractor's Benefit.** All inspections and tests are for the sole benefit of Contractor and shall not relieve the Subcontractor of the responsibility to ensure that the Subcontract Work complies with the Contract Documents. Inspections or tests by Contractor or the Architect shall not be construed as constituting or implying acceptance and shall not relieve the Subcontractor of responsibility for any noncompliance, damage to, or loss of the Subcontract Work prior to acceptance, nor in any way affect the continuing rights of Contractor or the Owner after acceptance of the completed Subcontract Work.
- A4.4 Rejection.** In case the Subcontractor shall fail to correct, replace and/or re-execute faulty or defective Subcontract Work done and/or materials furnished under this Subcontract, when and if required by the Contractor, or shall fail to complete or diligently proceed with this Subcontract within the time herein provided for, the Contractor upon three (3) days' written notice to the Subcontractor shall have the right to correct, replace and/or re-execute such faulty or defective Subcontract Work, or to take over this Subcontract and complete same either through its own employees or through a contractor or subcontractor of its choice, and to charge the cost thereof to the Subcontractor, together with any damages caused by a delay in the performance of this Subcontract.
- A4.5 Default and Remedies.** It is mutually agreed that it shall be considered a material breach of this Subcontract if the Subcontractor at any time: (a) fails to supply proper and sufficient materials; (b) fails to prosecute the Subcontract Work with promptness and diligence in accordance with Contractor's schedule; (c) delays, disrupts or interferes with the Work of Contractor or of any other contractors or subcontractors on the Project; (d) files or has filed against the Subcontractor a petition in bankruptcy or for an agreement for reorganization (Contractor being unwilling to accept and hereby declines performance by any trustee in bankruptcy); (e) has a material change in its financial condition, control or management; (f) transfers material assets; (g) fails to comply with its indemnification obligations to Contractor or fails to procure or maintain required insurance; (h) becomes insolvent or goes into liquidation or dissolution or makes an assignment for the benefit of creditors or otherwise acknowledges insolvency; (i) fails to save and protect Owner and Contractor from all claims and mechanics' liens; except to the extent caused by the uncured failure of the Contractor to make payment when required by the Contract Documents; (j) is in default under any other contract between Contractor and Subcontractor; (k) informs Contractor that Subcontractor is unable or unwilling to complete any portion of the Subcontract Work, or (l) violates any other term of the Contract Documents.

Without limiting any other rights or remedies provided by the Contract Documents or by law, and after forty-eight (48) hours' written notice to the Subcontractor mailed or delivered to its last known address, Contractor may: (a) perform and furnish through itself or through others any portion of the Subcontract Work and deduct the cost thereof from any monies due or to become due to the Subcontractor under

this Subcontract; (b) terminate the employment of the Subcontractor for all or any portion of the Subcontract Work; (c) either (1) demand completion of the Subcontract by the Subcontractor's surety, if any, or (2) enter upon the premises including any trailers, storage units or facilities owned or leased by Subcontractor and take possession, for the purpose of completing the Subcontract Work, of all materials, which the Subcontractor hereby transfers, assigns and sets over to Contractor for such purpose, and employ persons as necessary to complete the Subcontract Work and to provide all the services, materials, and other items required therefor; and/or (d) offset or recoup any payments due to Contractor, pursuant to any other contract between Contractor and Subcontractor.

After default, the Subcontractor shall not be entitled to receive any further payment under this Subcontract until the Subcontract Work shall be wholly completed to the satisfaction of Contractor and shall have been accepted by it, at which time, if the unpaid balance of the amount to be paid under this Subcontract shall exceed the cost incurred by Contractor in completing the Subcontract Work, including all losses, damages, costs and expense (including attorneys' fees) by reason of or resulting from the Subcontractor's default, such excess shall be paid by Contractor to the Subcontractor; but if such cost shall exceed such unpaid balance, then the Subcontractor, and its surety, if any, shall pay the difference to Contractor or any third party to which Contractor assigns its right to seek recovery. In the event that Contractor assigns its right to seek such recovery to an insurer, the parties agree that for the purposes of this section any agreements to waive subrogation shall not apply.

ARTICLE 5 PAYMENT

- A5.1 Application for Payment. Reserved. (see State Specific Exhibit for terms)**
- A5.2 Progress Payments. Reserved. (see State Specific Exhibit for terms)**
- A5.3 Joint or Direct Payments. Reserved. (see State Specific Exhibit for terms)**
- A5.4 Final Payment. Reserved. (see State Specific Exhibit for terms)**
- A5.5 Conditions to Payment. Reserved. (see State Specific Exhibit for terms)**
- A5.6 Effect of Payment. Reserved. (see State Specific Exhibit for terms)**

ARTICLE 6 INDEMNITY AND DEFENSE

A6.1 Definitions.

A6.1.1 "Claims" as used in this Article 6 shall mean any and all claims, costs, liabilities, liens, demands, causes of action, for or on account of any injury to persons, damage to property and the loss of use therefrom (including without limitation, the Subcontract Work), fines, penalties, assessments, or any other loss of whatever kind or nature arising out of or relating to the Project, together with actual attorneys' fees and costs arising out of such Claim and to enforce the provisions of this Article.

A6.1.2 "Indemnitees" as used in this Article 6 shall mean Contractor and its agents and employees, the Owner and its agents and employees, and all others whom Contractor is obligated to defend and/or indemnify under the Contract Documents.

A6.2 Indemnity. Reserved. (see State Specific Exhibit for terms)

A6.3 Defense. Reserved. (see State Specific Exhibit for terms)

A6.4 Insurance. SUBCONTRACTOR FURTHER AGREES TO OBTAIN, MAINTAIN AND PAY FOR SUCH PROJECT-SPECIFIC INSURANCE AS WILL INSURE THE PROVISIONS OF THIS ARTICLE 6.

A6.5 Remedies. The defense and indemnification obligations under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor, any Subcontractor, or sub-subcontractors, under worker's compensation acts, disability benefit acts or other employee benefit acts. This defense and indemnification obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity or defense which exist in this Subcontract or the Contract Documents or at law. Subcontractor's defense and indemnity obligations shall survive termination of this Subcontract and final payment. In the event of a claim against an Indemnitee, Contractor may, in its sole discretion, reserve, retain or apply any moneys owed to the Subcontractor for purpose of resolving such claim.

ARTICLE 7 CHANGES TO THE SUBCONTRACT WORK

A7.1 Changes. In accordance with the Contract Documents, the Contractor or its authorized representative shall have the right to order in writing the omission or addition of any parts of the Subcontract Work or materials. In the event of a change, a fair adjustment shall be made in the Subcontract Price for such omitted or added Subcontract Work and/or to the time for performance of the Subcontract Work by a written change order signed by Contractor. No extra Subcontract Work shall be allowed, or changes made by the Subcontractor, or paid for by the Contractor, unless and until authorized by the Contractor or its authorized representative in writing before the Subcontract Work and/or changes are begun. Subcontractor shall give notice to the Contractor of all claims for extras, for extensions of time and for damage in accordance with the Contract Documents and within forty-eight (48) hours of becoming aware of said potential increase and prior to performing any change in the Subcontract Work. Subcontractor agrees and understands that payment for any such changes, or any extension of time, is expressly conditioned upon strict adherence to the provisions of this Article and Contractor being granted a change from the Owner.

A7.2 Value of Change.

A7.2.1 Lump Sum Change Order: Subcontractor shall submit supporting documentation for costs in such form and detail as required under the Contract Documents or as requested by Contractor within five (5) business days of Contractor's request. Contractor and Subcontractor shall attempt to agree in advance to the total lump sum cost of the Change in Work, which lump sum shall include all compensation to Subcontractor on account of materials, services, overhead and profit.

A7.2.2 Time and Material Change Order: In the alternative, Contractor may direct Subcontractor to proceed with the change on a "time and material basis." If so directed by Contractor, compensation shall be based upon the Cost of the Work of the change plus Subcontractor's Fee. "Cost of the Work" if not defined in the Prime Contract shall be (a) reasonable cost of materials, including sales tax and the cost of delivery, (b) reasonable cost of services, including social security, unemployment insurance, and fringe benefits required by agreement or custom, workers' compensation insurance and bond premiums (if any), and (c) reasonable rental value

of equipment and machinery obtained and used specifically for such changed work. All such time and material work shall be undertaken on an “open book” basis, and Contractor and its representatives and agents shall be entitled to copy and audit any and all of Subcontractor’s records related to such work, including all timecards, purchase orders, invoices, cancelled checks and other records related to the Cost of the Work incurred and/or paid.

- A7.3 Proceeding with Subcontract Work.** Notwithstanding any disputes or disagreements over the changed Subcontract Work or over the sum of the equitable adjustments above, the Subcontractor nevertheless shall proceed promptly to perform and complete the Subcontract Work as changed.
- A7.4 Verbal Changes Ineffective.** If Subcontractor makes any changes in the Subcontract Work without written direction from Contractor, Subcontractor will not be paid for that changed Subcontract Work, even if it received verbal direction from Contractor or any form of direction, written or otherwise, from Owner or any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses (including attorneys’ fees), damages or liability arising out of any such change it makes without written direction from Contractor.

ARTICLE 8 DISPUTE AVOIDANCE AND RESOLUTION

- A8.1 Cooperation.** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Contractor and Subcontractor each commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays, and disruptions to the Work.
- A8.2 Meeting of Field and Senior Representatives.** Contractor and Subcontractor will first attempt to resolve disputes or disagreements at the field level through discussions between Subcontractor’s Authorized Representative and Contractor’s representative. If the dispute or disagreement cannot be so resolved, Senior Representatives of Contractor and Subcontractor, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than fifteen (15) days after such a request is made, to attempt to resolve such dispute or disagreement. “Senior Representatives” shall mean the President, CFO, COO, Executive Vice President, or similar officer or executive who is not involved in day-to-day management of the Project. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.
- A8.3 Contractor to Make Initial Decision on Disputes.** If the dispute or disagreement has not been resolved as a result of the meeting of the Senior Representatives, or if no meeting of the Senior Representatives occurs for any reason, Contractor shall initially decide the dispute or disagreement. Contractor shall reduce its decision to writing and furnish a copy thereof to Subcontractor. Contractor’s decision shall be final and conclusive unless Subcontractor advises Contractor in writing within seven (7) business days of receiving the decision of the bases for its disagreement with the decision. Subcontractor agrees that if it does not contest the Contractor’s decision within the time and in the manner required under this Section A8.3, Contractor’s decision shall be final, binding, and conclusive and the Subcontractor shall be deemed to have waived any right to contest the decision. Contractor decisions properly contested by Subcontractor shall be resolved in accordance with Section A8.4.
- A8.4 Method of Dispute Resolution.** Claims and disputes between Contractor and Subcontractor shall be resolved as follows:

- A8.4.1** All disputes between Contractor and Subcontractor that do not in any way involve the Owner, the Owner’s design, the Architect and/or other consultants of the Owner and/or Architect shall be resolved in a court of competent jurisdiction.
- A8.4.2** In the event any dispute or claim between Contractor and Subcontractor which directly or indirectly involves the Owner, the Owner’s design, the Architect and/or other consultants of the Owner and/or Architect, or in the event of any dispute or claim between Contractor and Subcontractor caused by or arising out of conduct for which the Owner may be responsible, Subcontractor agrees to be bound to Contractor and Contractor agrees to be bound to Subcontractor to the same extent the Contractor is bound to Owner by the terms of the Prime Contract and by all procedures and resulting decisions, findings, determinations and/or awards made thereunder by the person or entity so authorized in the Prime Contract, or by an administrative agency, board, court of competent jurisdiction, or arbitration. The Contractor’s good faith determination of whether any Subcontractor claim arises out of the Prime Contract is one for which the Owner may be responsible, shall be final and conclusive. If any dispute or claim of Subcontractor is prosecuted or defended by Contractor together with any of Contractor’s disputes or claims, and Subcontractor is not directly a party, Subcontractor agrees to cooperate fully with Contractor and to furnish all documents, statements, witnesses and other information required by the Contractor for such purpose and shall pay or reimburse Contractor for all expenses and costs, including reasonable attorneys’ fees incurred in connection therewith, to the extent of Subcontractor’s interest in such claim or dispute.
- A8.4.3** Subcontractor agrees to be bound by the procedure and final determination as specified in the Prime Contract and, unless prohibited under applicable state statutes, agrees it will not take, or will stay or suspend, any other action with respect to such claims (including, but not limited to, actions commenced pursuant to Federal Miller Act, lien statutes or other state bond or retainage act) and will pursue no independent litigation with respect thereto, pending final determination of any resolution procedure between Owner and Contractor, which will be binding on Subcontractor. Subcontractor’s timely presentation, cooperation and participation in any determination of a dispute under the Prime Contract, including any and all appeals under the dispute provision(s) of the Prime Contract and Subcontractor’s timely payment of its share of the claim pursuant costs shall be conditions precedent to pursuit of any action by Subcontractor against Contractor with respect to any such claim or dispute. It is expressly understood and agreed that as to any and all claims asserted by Subcontractor in connection with this Project arising from actions of or fault of the Owner, the Contractor shall not be liable to the Subcontractor for any greater amount than Owner is liable to Contractor, less any mark ups or costs incurred by the Contractor. As to any claims asserted by the Subcontractor for or on account of acts or omissions of the Owner, or its agents or design professionals, at the sole option of Contractor, Subcontractor agrees to prosecute such claims in Contractor’s name. Subcontractor shall have full responsibility for the preparation and presentation of such claims and shall bear all expense thereof, including attorneys’ fees.
- A8.5** **Joinder in Related Proceedings.** In the event Contractor is involved in a separate arbitration, litigation, mediation or other legal proceeding in which any aspect of the Subcontractor’s Work or entitlement to payment is at issue, or questions of law or fact common to the Subcontractor’s performance under the Subcontract are involved; or, if complete relief cannot be afforded in such proceeding without the Subcontractor’s participation therein, Subcontractor hereby consents, upon written demand by Contractor, to its consolidation or joinder in that proceeding to the applicability of any rules or procedures applicable to such proceeding; and hereby waives any objections to the location or forum in which the proceeding is pending. In the event Subcontractor has initiated litigation against Contractor

at the time Contractor's demand for consolidation or joinder is received, and that proceeding cannot be consolidated with the proceeding in which the Contractor is involved, Subcontractor agrees to dismiss or, in the event dismissal would prejudice Subcontractor's rights, stay the litigation.

A8.6 Governing Law, Jurisdiction and Venue. This Subcontract shall be governed by and construed in accordance with the laws of the state where the Project is located. Subject to Section A8.4, for any action or proceeding involving claims and disputes between Contractor and Subcontractor arising out of or in connection with the Subcontract or the Work, Contractor and Subcontractor expressly and unconditionally: (a) agree that the venue for litigation shall be at the place where the Project is located; and (b) waive the right to a trial by jury in the action or proceeding.

A8.7 Continued Performance Required. Subcontractor acknowledges the importance of performing and completing the Work and its other obligations under the Subcontract in a timely manner. Subcontractor agrees that its rights in connection with any claim or dispute with Contractor in connection with the Subcontract shall be determined as provided in this Article 8 or elsewhere in the Contract Documents, and that it shall not be entitled to suspend or otherwise delay its performance and completion of the Subcontract Work or the performance of its other obligations under the Subcontract based on any alleged breach by Contractor or claim or dispute between the parties, regardless of whether such breach, claim or dispute is the subject of dispute resolution between Contractor and Subcontractor.

ARTICLE 9 ELECTRONIC FILE SHARING

Electronic File Sharing. AIA Document E201 – 2007 Digital Data Protocol Exhibit is incorporated into this Agreement.

ARTICLE 10 BONDS

If payment and performance bonds are required under the Subcontract, and are not furnished with this Contract, Contractor may, at any time prior to or during performance of this Subcontract, demand that Subcontractor obtain and furnish payment and performance bonds in the full amount of this Subcontract underwritten by a surety or sureties satisfactory to Contractor and authorized to do business in the state in which the Project is located. Subcontractor shall notify Contractor of the bond premium and pay such amount directly. Contractor shall reimburse Subcontractor for the commercially reasonable cost of the bond premium. Subcontractor's failure to deliver satisfactory bonds or renewals thereof within ten (10) calendar days after demand may be deemed a material breach of this Subcontract.

ARTICLE 11 OTHER PROVISIONS

A11.1 Rights Cumulative. All of Contractor's remedies herein are cumulative and in addition to all other remedies at law or in equity.

A11.2 Entire Agreement. This Subcontract comprises the entire agreement between the parties hereto and is effective on the date set forth above. No other agreement, representation or understanding concerning the same has been made and no oral statement, understanding or agreement shall affect the terms hereof.

- A11.3 Severability.** To the best knowledge and belief of the parties, this Subcontract contains no provision that is contrary to federal or state law, ruling or regulation. However, if any provision of this Subcontract shall conflict with any such law, ruling or regulation, then such provision shall continue in effect only to the extent permissible. In the event any provision is thus inoperative, the remaining provisions shall, nevertheless, remain in full force and effect.
- A11.4 Successors.** This Subcontract shall be binding on and inure to the benefit of the heirs, successors and assigns of the parties hereto.
- A11.5 Non-Waiver.** This Subcontract may not be changed or amended, and no provision may be waived by Contractor except in writing signed by Contractor's authorized officers or agents. If Contractor does not insist in any instance upon strict compliance with any of the provisions of this Subcontract, or exercise any options provided, this shall not be construed as a waiver of its right to thereafter require such compliance or to exercise such option.
- A11.6 Notice.** Any notice required to be given by the terms and provisions of the Subcontract or any laws, or which either party may desire to give hereunder, either by Contractor or Subcontractor, shall be in writing and shall be personally delivered, forwarded by registered or certified mail (return receipt requested), sent by overnight delivery service or by facsimile, and shall be addressed to the representatives as described above at the address stated on the first page of this Subcontract. Either party may change the address to which any notice referred to herein is to be sent by giving written notice of such change of address to the other party in the manner provided above. Notice personally delivered, sent by overnight delivery service, or sent by facsimile shall be effective on the date of delivery. Notice given by certified mail shall be effective as of the earlier of (i) date of receipt, or (ii) three days after mailing, properly addressed and postage prepaid.
- A11.7 Infringement.** The Subcontractor shall pay all royalties and license fees and shall defend all suits or claims for infringement of any patent, trademark or copyright arising out of the Subcontract Work.
- A11.8 Assignment and Subletting.** This Subcontract shall not be assignable without the prior written consent of Contractor, nor shall the whole or any part of this Subcontract be sublet without prior written consent. Any such assignment or subletting without prior written consent shall be void and of no effect and shall vest no right or right of action in the assignee or Subcontractor against Contractor.
- A11.9 Sexual Harassment.** Subcontractor shall implement a policy and procedures to prohibit sexual harassment by any employee, subcontractor, or agent. Any instance of such conduct will be subject to timely and appropriate action by Contractor, including, but not limited to, immediate termination of the Subcontract.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:

- a. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education or housing;
- b. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing, or;

- c. that conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile or offensive employment, public accommodations, public services, educational or housing environment.

The prohibition extends to all persons at the Project Site and includes conduct or communications to pedestrians or drivers using sidewalks or streets near the Project Site, as well as persons employed in nearby businesses.

A11.10 Drug and Alcohol Testing. Contractor shall be permitted to perform drug/alcohol testing of subcontractors, their employees, and agents, to meet legal or owner requirements or pursuant to the Contractor's adopted written drug and alcohol testing policy including, but not limited to, reasonable suspicion testing following an accident or injury. Copies of the Contractor's drug and alcohol testing policy are on file with the Contractor and are incorporated by reference and made a part of this Agreement. Possessing or consuming alcoholic beverages, illegal or unauthorized drugs or controlled substances while performing on the Project Site (including offices, parking lots, all work locations, desks, lockers, living areas, restrooms, break rooms and any motor vehicle, vessel or aircraft engaged in business on behalf of the Contractor) is strictly prohibited. Contractor prohibits all employees and subcontractors and their employees and agents from reporting to work while under the influence of illegal or unauthorized drugs or alcohol regardless of when or where the substance entered the person's system.

A11.11 Hazardous Waste Materials. The Municipal, State and Federal Pollution Control Agencies have published a list of materials that are designated hazardous. If Subcontractor intends to use any of these materials on this Project, they must be used in accordance with applicable regulations. Said materials and containers must be removed from the site when Subcontract Work has been completed. HAZARDOUS MATERIALS AND CONTAINERS MUST NOT BE DISPOSED OF IN THE JOB DUMPSTERS. Subcontractor shall notify all job personnel of this requirement. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, other Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Subcontract Work in the affected area if in fact the material or substance presents the risk of bodily injury or death, and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

In the event the Subcontractor encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl (PCBs), or other hazardous materials, the Subcontractor shall stop work in the area affected and immediately report the condition to the Contractor in writing, with a copy of the report for the Owner and the Architect. Work in the area affected shall resume promptly after the Owner or qualified contractors retained by the Owner have certified that the hazardous materials have been removed or rendered harmless by proper enclosure or other appropriate techniques.

A11.12 Concealed Weapons. Contractor prohibits all employees and subcontractors and their employees or agents from carrying or possessing firearms while acting in the course and scope of employment. Violation of this policy may result in termination of the Subcontractor.

A11.13 Advertising. No advertising signs will be allowed on the jobsite.

A11.14 Photographs. No photographs, videos, CDs, multimedia, or images of any kind are allowed to be taken without the express written permission of the Job Superintendent.

A11.15 Helmets, Safety Glasses, and Gloves. Helmets and ANSI-approved safety glasses must be worn at all times by everyone, including Contractor's and subcontractors' personnel and visitors, when working on or visiting the jobsites in accordance with McGough's Health and Safety program.

A minimum of Class C Type II Helmet is required on all McGough projects. The helmets must meet ANSI Z89 (Type II) performance standards 4.2.1.2 (front energy absorption), 4.2.1.3 (side energy absorption), 4.2.1.4 (rear energy absorption), 4.2.3 (retention system strength), and 4.2.4 (retention system effectiveness). Workers engaged in electrical work, including but not limited to electricians, lineworkers, and maintenance technicians, must wear ANSI Z89 Class E Type II helmets to protect the potential risk of electrical hazards. Workers who may be exposed to chemical hazards are required to wear Class E Type II helmets.

Contractors', vendors', and subcontractors' workers must use the appropriate gloves for their assigned tasks and the specific hazards encountered. A minimum level of A3 cut-resistance gloves are required for all workers. Visitors not performing work, such as owner representatives or tour groups, are not required to wear gloves.

A11.16 Cranes and Hoisting. Subcontractor shall comply with the OSHA Crane Standard (29 CFR Part 1926, Cranes and Derricks in Construction; Final Rule) and shall provide Contractor with documented evidence that demonstrates that these requirements are in compliance with the OSHA standard for all operators and riggers. All crane operators will provide proof of certification by a nationally recognized and accredited certification program as required by the National Commission for the Certification of Crane Operators (NCCCO).

A11.17 Fall Protection. The Subcontractor shall comply with six (6) foot fall protection policy. This applies to all leading-edge work activities.

A11.18 Smoking. No smoking will be allowed on this jobsite or its surrounding grounds unless otherwise specified by the Job Superintendent.

A11.19 Neutral Interpretation. The parties expressly agree that both parties have had the opportunity to negotiate and to obtain assistance of counsel in reviewing this Agreement prior to execution. This Agreement shall be construed neither against nor in favor of either party but shall be construed in a neutral manner.

A11.20 Counterparts. This Subcontract may be executed by the Contractor and Subcontractor separately in counterparts which, taken together, shall constitute an original. This subcontract may be executed by facsimile, email, or electronic signatures, which shall be deemed to have the same force and effect as an original signature. Whenever this Subcontract is executed in this manner, no changes, alterations, or modifications shall be accepted and both parties agree that the original version of this Subcontract is the only version that is binding.

[END OF DOCUMENT]



EXHIBIT B
MCGOUGH STANDARD INSURANCE REQUIREMENTS

PLEASE SUBMIT YOUR CERTIFICATE OF INSURANCE ELECTRONICALLY TO COI@MCGOUGH.COM

****PLEASE INCLUDE JOB NUMBER AND JOB NAME WHICH CAN BE FOUND ON THE TOP OF THE COVER LETTER****

B1. Insurance. Prior to commencing any Subcontract Work hereunder, the Subcontractor shall procure, maintain, and pay for insurance of the type and with the minimum coverage and limits of liability of the greater of the coverage and limits (i) specified below, (ii) specified in the Contract Documents for subcontractors, or (iii) required by law.

Workers' Compensation	Statutory Limits
Employers' Liability*, including "Stop Gap" coverage and USL&H if applicable	\$1,000,000 each accident \$1,000,000 disease-policy limit \$1,000,000 disease-each employee
Commercial General Liability*	\$1,000,000 each occurrence \$1,000,000 personal and advertising injury (per offense) \$2,000,000 products/completed operations aggregate \$2,000,000 general aggregate (applies per project)
Commercial Automobile Liability*	\$1,000,000 any one accident or loss
Contractor's Pollution Liability, including Coverage for mold (if required pursuant to B6 below)	\$1,000,000 each claim or occurrence \$2,000,000 annual aggregate
Professional Liability (Errors & Omissions) (If required pursuant to B7 below)	\$1,000,000 each claim \$2,000,000 annual aggregate
Pollution (Environmental) Liability Insurance (If required pursuant to B8 below)	\$2,000,000 per loss for hazardous waste \$2,000,000 annual aggregate for hazardous waste \$2,000,000 per incident all other waste \$2,000,000 annual aggregate all other waste
Excess / Umbrella Liability	\$5,000,000 each occurrence

*Any combination of higher primary limits and lower umbrella limits is permissible so long as the sum of the primary and umbrella limits held by Subcontractor is equal to the sum of the primary and Excess / Umbrella Liability limits listed above.

- B2. Workers Compensation Insurance.** The Workers Compensation policy shall cover all Subcontractor's Jobsite employees and co-employees and, unless prohibited under applicable state statutes, include a waiver of subrogation in favor of Contractor and Owner executed on ISO Endorsement Form No. WC 420304 (Texas Only) or ISO Endorsement Form No. WC 000313 (all other states). Workers Compensation insurance is required, and no alternative forms of insurance shall be permitted.
- B3. Commercial General Liability Insurance.** Commercial General Liability insurance required under this Subcontract shall be on ISO Form CG 00 01 or its equivalent and include coverage for liability arising from premises, operations, independent contractors, products-completed operations including construction defect, contractual liability, personal injury, and advertising injury. There shall be no limitations or exclusions of coverage beyond those contained in the standard coverage form. To the extent that Subcontractor's Commercial General Liability insurance is subject to aggregate limits, policies shall be endorsed so as to apply such aggregate limits separately to the Project.
- B4. Commercial Automobile Liability Insurance.** Commercial Automobile Liability insurance required under this Subcontract shall be on ISO Form CA 00 01, or its equivalent and shall provide coverage for liability for bodily injury and property damage arising from the use or operation of any auto including those owned, hired, non-owned and otherwise operated or used by or on behalf of Subcontractor.
- B5. Excess / Umbrella Liability Insurance.** Excess / Umbrella Liability insurance required under this Subcontract shall follow the form of the Commercial General Liability insurance, Commercial Automobile Liability insurance, and Workers' Compensation Employers' Liability insurance as required in the Subcontract. To the extent that Subcontractor's Excess / Umbrella Liability insurance is subject to aggregate limits, policies shall be endorsed so as to apply such aggregate limits separately to the Project.
- B6. Contractor's Pollution Liability Insurance.** Contractor's Pollution Liability insurance is required if the Subcontractor's scope of work includes any of the following services: building enclosure systems (including but not limited to: foundations, roofing/flushing, moisture/vapor barriers, exterior windows, curtain wall/storefront, stucco/plaster/EIFS, exterior masonry, exterior rough carpentry, exterior wall panels, exterior caulking, waterproofing), drywall, insulation, fireproofing, MEP trades (including but not limited to: heating, ventilating, air conditioning systems and controls, electrical, plumbing, sprinklers/fire protections), excavating and intrusive site-work (including but not limited to: earthwork/excavation, underground utilities, Geo piers/caissons/piling) and abatement work.

Contractor's Pollution Liability insurance required under this Subcontract shall include coverage for bodily injury, property damage and environmental damage, including clean-up costs, resulting from pollution conditions that arise from the Subcontractor's scope of services (ongoing and completed). Such coverage shall include affirmative coverage for mold/fungus and transportation and shall cover costs, charges and expenses incurred in the investigation, settlement, or defense of claims. If Subcontractor's scope of services includes disposal of waste or hazardous materials off-site, coverage shall extend to the disposal, treatment and/or storage site(s) utilized.

Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the commencement date of this Subcontract, and coverage is continuously maintained during all periods in which Subcontractor performs Subcontract Work, and for a period of five (5) years after Subcontractor completes its Subcontract Work, or such longer period as the Contract Documents may require.

- B7. Professional Liability Insurance.** If Subcontractor's scope of services includes any design, architectural, engineering, professional consulting, construction management, surveying or other professional services, Professional Liability insurance covering claims arising from acts, errors or omissions in the performance or non-performance of such services is required.

Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the commencement date of this Subcontract, and coverage is continuously maintained during all periods in which Subcontractor performs Subcontract Work, and for a period of five (5) years after Subcontractor completes its Subcontract Work, or such longer period as the Contract Documents may require. If Subcontractor's scope of work includes environmental engineering or consulting, the terms of coverage shall contemplate such environmental professional services and shall not contain a pollution exclusion.

- B8. Pollution (Environmental) Liability Insurance.** If Subcontractor's scope of services includes disposal of waste or hazardous materials off-site, the Subcontractor shall obtain a certificate of insurance evidencing Pollution (Environmental) Liability insurance from the disposal site operator which shall meet all statutory and regulatory limit requirements. Coverage shall include bodily injury, property damage and environmental damage, including clean-up costs, resulting from pollution conditions on, at or emanating from disposal site, treatment or storage facility accepting waste including costs, charges and expenses incurred in the investigation, settlement, or defense of claims.

Claims-made coverage is permitted, provided coverage is continuously maintained for a period of five (5) years after Subcontractor completes its Subcontract Work, or such longer period as the Contract Documents may require.

- B9. Watercraft Liability Insurance.** Watercraft Liability insurance is required if watercraft of any kind is used by Subcontractor on the Project. Watercraft liability insurance must cover: (i) bodily injury; (ii) property damage; and (iii) passenger liability, and meet the following requirements:

- a. Limit of Liability: Combined Single Limit (Bodily Injury and Property Damage), \$1,000,000 each occurrence;
- b. Protection and Indemnity Insurance to include Jones Act crew coverage (or at least Maritime Employer's Liability: MEL), collision, tower's liability, and wreck removal coverage, on a form providing coverage no less extensive than that afforded in the P & I SP-23 form (revised 1/56), including a pollution buy-back endorsement.

- B10. Aircraft Liability Insurance.** Aircraft Liability insurance is required if aircraft of any kind is used by Subcontractor on the Project. Aircraft liability insurance must cover: (i) bodily injury; (ii) property damage; and (iii) passenger liability, and meet the following requirements:

- a. Limit of Liability: Combined Single Limit (Bodily Injury and Property Damage and Passenger Liability), including hull physical damage insurance for the full replacement cost of each aircraft used in the work. Such Aircraft Liability and Hull Coverage shall include a waiver of subrogation against Contractor and all others required by this Agreement to be additional insured. \$10,000,000 per occurrence.

- B11. Property and Equipment Insurance.** Subcontractor's property and equipment insurance required under this Subcontract shall insure against loss or damage to all Subcontractor owned, leased, or borrowed tools, construction equipment, mobile equipment, protective fencing, property of Subcontractor employees and other similar property owned, leased, or borrowed by the Subcontractor. Subcontractor

shall be responsible for any deductible or uninsured loss on this policy. Subcontractor shall require its subcontractors and sub-contractors to insure their owned or leased equipment in the same manner.

B12. Additional Insurance Provisions:

B12.1 Additional Insured Requirements. The Subcontractor shall endorse the Commercial General Liability, Commercial Automobile Liability, Excess / Umbrella Liability and Contractor's Pollution Liability (if coverage is required pursuant to B6) policies to add the Contractor, its officers, directors, and employees, the Owner, and all other persons required in the Contract Documents, as additional insureds with respect to liability arising out of operations performed or completed for the Contractor and the Owner by the Subcontractor. The additional insured endorsements to Subcontractor's Commercial General Liability policy shall be on ISO Form CG 20 10 07 04 (ongoing operations) and CG 20 37 07 04 (products-completed operations) or their equivalent. The additional insured endorsements to Subcontractor's Automobile Liability insurance shall be on ISO Form CA 20 48, or its equivalent. The Excess / Umbrella Liability insurance shall follow from the treatment of the additional insured under the Commercial General Liability and Commercial Automobile Liability policies. Additional insured coverage under the Contractor's Pollution Liability (if coverage is required pursuant to B5) shall apply to both ongoing and completed operations.

Additional insured coverage afforded by Subcontractor's Commercial General Liability, Automobile Liability, Excess / Umbrella Liability and Contractor's Pollution Liability insurance shall be **primary and non-contributing** with respect to any insurance or self-insurance available to Contractor or Owner. Any other insurance or self-insurance maintained by Contractor or Owner, or any additional insured coverage provided by Contractor pursuant to the Contract Documents, shall be excess of, and non-contributory with, the coverage afforded by Subcontractor's Commercial General Liability, Automobile Liability, Excess / Umbrella Liability and Contractor's Pollution Liability insurance, if any.

B12.2 Duration of Insurance. All insurance required pursuant to this Subcontract shall be in force prior to the commencement date of this Subcontract, shall be maintained for the duration of the Project, and Subcontractor agrees to continue to procure and maintain the products-completed operations liability insurance coverage for a minimum of five (5) years after the date the Subcontract Work is substantially complete. All terms and conditions of coverage shall be maintained during this completed operations period, including the required coverage limits and the requirement to provide Contractor and Owner with coverage as an additional insured for completed operations.

B12.3 Property Insurance Waiver of Subrogation. To the extent of coverage afforded by builder's risk or any other first party property or equipment floater insurance applicable to the Work or the Project or equipment used in the performance of the Work or Project, regardless of whether such insurance is owned by or for the benefit of the Subcontractor, the Contractor, the Owner or their respective subcontractors and agents, the Contractor and the Subcontractor agree to waive all rights against (a) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (b) the Architect and Architect's consultants, (c) and Owner and Owner's separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents or employees, whether under subrogation or otherwise, for loss or damage to the extent covered by such first party insurance, except such rights as they may have to the proceeds of such insurance. The Contractor and Subcontractor shall require similar written waivers in favor of the individuals and entities identified above from their respective

consultants and sub-consultants. If policies of insurance referred to in this paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, then the owners of such policies will cause them to be so endorsed. A waiver of subrogation shall be effective as to a party even though that party would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the party had an insurable interest in the property damaged.

B12.4 General Waiver of Subrogation. Subcontractor agrees to waive all rights of subrogation against the Contractor, Owner and Architect, and shall cause each of its subcontractors to waive all rights of subrogation against the Contractor, Owner and Architect, their agents, and employees, as respects loss, damage, claims, suits, or demands, howsoever caused:

- a. To real or personal property, vehicles, equipment, tools, etc. owned, leased, or used by Subcontractor or Subcontractor's employees, agents, or sub-subcontractors; and
- b. To the extent such loss, damage, claims, suits, or demands are, or should be, afforded coverage by the Subcontractor's required or any other insurance maintained by the Subcontractor. This waiver shall apply to all first party property, equipment, vehicle, and workers' compensation claims (unless prohibited under applicable state statutes), and all third-party liability claims. This waiver shall apply to all deductibles, retentions, or self-insured layers applicable to the required or any other insurance maintained by the Subcontractor. If necessary, Subcontractor agrees to endorse the required insurance policies to permit waivers of subrogation in favor of Contractor, Owner, and Architect as required hereunder. Subcontractor further agrees to hold harmless and indemnify Contractor, Owner, and Architect for any loss or expense incurred as a result of Subcontractor's failure to obtain such waivers of subrogation from the insurers.

B12.5 Insurance Deductible and Self-insured Retentions Liability. The Subcontractor shall be solely responsible for funding deductibles and self-insured retentions maintained by Subcontractor, including any amounts applicable to deductibles or self-insured retentions applicable to claims involving the Contractor or Owner as an additional insured. Any self-insured retention in excess of \$50,000 must be declared and approved by Contractor.

B12.6 Primary/Non-Contributing. Subcontractor's required insurance coverage shall be primary insurance, and any insurance or self-insurance maintained by the Contractor or Owner shall be excess of and non-contributory with Subcontractor's insurance.

B12.7 Severability of Interest. Except with respect to the limits of insurance, Subcontractor's required insurance shall apply separately to each insured or additional insured.

B12.8 Rating of Insurance Provider. The Subcontractor shall maintain in effect all insurance coverage required under this Subcontract, or by the other Contract Documents, at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor, with a current A.M. Best Company Rating of not less than A- VII or better and authorized to transact business in the state where the Work will be performed by Subcontractor.

B12.9 Notice of Cancellation and Modification. All insurance policies shall contain a provision that coverage afforded thereunder shall not be cancelled without thirty (30) days' prior written notice to the Contractor and to each additional insured to whom a certificate of insurance has been issued; provided, however, that a ten (10) day prior notice requirement may apply in the event of cancellation due to nonpayment of premium. In addition, Subcontractor shall also

provide to Contractor a copy of any notices of cancellation or modification of any insurance policies within ten (10) days of receipt.

B12.10 Verification of Coverage. Certificates of insurance for all policies required by this Subcontract (including copies of all additional insured endorsements) shall be filed with the Contractor prior to the start of the Subcontract Work. Such Certificates of Insurance shall be in a form acceptable to the Contractor, shall specifically designate the name of the project for which the certificate is required, and shall provide satisfactory evidence that the Subcontractor has complied with all insurance requirements, including evidence that the Contractor, the Owner, and the other persons required by the Contract Documents have been added as additional insureds.

Certified copies of policies, including all policy endorsements, shall be furnished by Subcontractor within 15 days of written request by General Contractor.

The certificate(s) of insurance shall be subject to approval by Contractor, but failure of Contractor to request such certificate or other evidence of Subcontractor compliance with insurance requirements, or failure of General Contractor to identify deficiencies from evidence that is provided, shall in no way limit or relieve Subcontractor of its obligations to maintain such insurance.

B12.11 No Representation of Coverage Adequacy. In specifying minimum Subcontractor insurance requirements, Contractor does not represent that such insurance is adequate to protect Subcontractor for loss, damage, or liability arising from its Work. Subcontractor is solely responsible to inform itself of types or amounts of insurance it may need beyond these requirements to protect itself.

The insurance requirements set forth in minimum amounts shall not be construed to relieve Subcontractor of liability in excess of such coverage, nor shall it preclude Contractor from taking such other actions as is available to it under any other provision of the Subcontract. To the extent Subcontractor maintains insurance greater than these minimum requirements, Subcontractor agrees that such insurance shall be applicable to any of Subcontractor's liability obligations hereunder.

Any acceptance of certificates of insurance by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Subcontract, including the duty to indemnify and hold harmless Contractor.

The Contractor does not represent that any builder's risk or property insurance applicable to the Subcontract Work, if any, is adequate to protect the interests of the Subcontractor. It shall be the obligation of the Subcontractor to determine whether such insurance is in effect and provides adequate protection for its insurable interests, or whether the Subcontractor should purchase and maintain supplementary property insurance that it deems necessary to protect its interests in the Subcontract Work.

B12.12 Failure to Provide Insurance. Failure of Subcontractor to maintain the required insurance shall constitute a default under this Subcontract and, at Contractor's option, shall allow Contractor to terminate this Subcontract for cause, withhold payment, and/or obtain such insurance and back charge all costs for such insurance to the Subcontractor.

[END OF DOCUMENT]

EXHIBIT C
AIA Document E201™ - 2007
Digital Data Protocol

This Digital Data Protocol is incorporated into the accompanying agreement attached or the previously executed Master General Conditions Agreement (the “Agreement”) between McGough Construction Co., LLC (the “Contractor”) and Subcontractor for each specified Project.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS**
- 2 TRANSMISSION OF DIGITAL DATA**
- 3 PROJECT PROTOCOL TABLE**

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 This Exhibit establishes the terms and conditions the parties agree to follow with respect to the transmission or exchange of Digital Data for this Project.

§ 1.1.1 The parties agree to incorporate this Exhibit by reference into any other agreement for services or construction for the Project.

§ 1.1.2 Signatures may be made by electronic methods to the fullest extent permitted by applicable law.

§ 1.2 DEFINITIONS

§ 1.2.1 Digital Data. Digital Data is defined as information, communications, drawings, or designs created or stored for the Project in digital form.

§ 1.2.2 Confidential Information. Confidential Information is defined as Digital Data that the Contractor has designated as confidential and clearly marked with an indication such as “Confidential” or “Business Proprietary.”

§ 1.2.3 Written or In Writing. In addition to any definition in the Agreement to which this Exhibit is attached, “written” or “in writing” shall mean any communication, including without limitation a notice, consent, or interpretation, prepared, and sent to an address provided in this Exhibit using a transmission method set forth in this Exhibit that permits the recipient to print or store the communication. Communications transmitted electronically are presumed received if sent in conformance with this Section 1.2.3.

ARTICLE 2 TRANSMISSION OF DIGITAL DATA

§ 2.1 The transmission of Digital Data constitutes a warranty by the Contractor to Subcontractor that the Contractor (1) is the copyright owner of the Digital Data, (2) has permission from the copyright owner to transmit the Digital Data for its use on the Project, or (3) is authorized to transmit Confidential Information.

§ 2.2 Subcontractor agrees to keep Confidential Information strictly confidential and not to disclose it to any other person except to (1) its employees, (2) those who need to know the content of the Confidential Information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of Confidential Information.

- § 2.3 The Contractor does not convey any right in the Digital Data or in the software used to generate the data. Subcontractor may not use the Digital Data unless permission to do so is provided in the Agreement, in other documents incorporated by reference into the Agreement, such as the general conditions of the contract for construction, or in a separate license.
- § 2.4 Unless otherwise granted in a separate license, Subcontractor's use, modification, or further transmission of the Digital Data, as provided in the Agreement, is specifically limited to the design and construction of the Project, and nothing contained in this Exhibit conveys any other right to use the Digital Data for another purpose.
- § 2.5 To the fullest extent permitted by law, Subcontractor shall indemnify and defend the Contractor from and against all claims arising from or related to Subcontractor's use or transmission of said files, modifications to, or unlicensed use of, the Digital Data.
- § 2.6 In transmitting or using the Digital Data, Contractor makes no guarantee or representation as to the accuracy, suitability, sufficiency, or completeness of information provided, regardless of its data format, methods of transmission or permitted uses. The transfer of the Digital Data is not and shall not be deemed a sale. Contractor makes no warranties, either express or implied, including warranties of merchantability or fitness for any particular purpose.
- § 2.7 The Digital Data and the information contained therein are furnished by and accepted by Subcontractor "AS IS," "WITH ALL FAULTS," and without any warranty whatsoever. All other warranties of merchantability, fitness for any particular purpose, title and/or non-infringement are specifically excluded and disclaimed. Contractor does not warrant that the Digital Data or the information contained therein will meet Subcontractor's requirements or that the operation of such files will be uninterrupted or error free. The entire risk as to the quality, suitability, completeness, performance, accuracy, and effort of the Digital Data and the information contained therein is with Subcontractor.
- § 2.8 Subcontractor acknowledges that the true and accurate record of the drawings for the Project is the most recent issued signed or sealed printed hard copy of the drawings and not the requested Digital Data. Differences may exist between the Digital Data and corresponding hard copy drawings. In the event that a conflict arises between hard copy drawings and the Digital Data, the hard copy drawings shall govern, and the undersigned assumes responsibility for determining whether a conflict exists.

ARTICLE 3 PROJECT PROTOCOL TABLE

- § 3.1 The table below illustrates the preferred flow of activity when transmitting or using Digital Data on the Project. The parties agree to comply with the data formats, transmission methods and permitted uses set forth in the Project Protocol Table below when transmitting or using Digital Data on the Project. In the event that a difficulty exists that prevents compliance with this table, then notification is required in writing by Subcontractor to Contractor.

Construction Services Agreement (CSA) Subcontract
Exhibit C – AIA Document E201-2007 Digital Data Protocol

(Complete the Project Protocol Table by entering information in the spaces below. Adapt the table to the needs of the Project by adding, deleting, or modifying the listed Digital Data as necessary. Use Section 3.2 Project Protocol Table Definitions to define abbreviations placed, and to record notes indicated, in the Project Protocol Table.)

	Digital Data	Data Format	Transmitting Party	Transmission Method	Receiving Party	Permitted Uses	Notes
§3.1.1	Project Agreements and Modifications						
§3.1.2	Project Communications						
	General Communications						
	Meeting Notices						
	Agendas						
	Minutes						
	Requests for Information						
	Other:						
§3.1.3	Architect's Pre-Construction Submittals						
	Schematic Design Documents						
	Design Development Documents						
	Construction Documents						
§3.1.4	Architect's Drawings and Specifications						
	Contract Documents						
	Drawings						
	Specifications						
	Addenda						
	Other:						
§3.1.5	Contractor's Submittals						
	Product Data						
	Submitted by Contractor						
	Returned by Architect						
	Shop Drawings						
	Submitted by Contractor						
	Returned by Architect						
	Other Submittals:						
§3.1.6	Subcontractor's Submittals						
	Product Data						
	Submitted by Subcontractor						
	Returned by Contractor						
	Shop Drawings						
	Submitted by Subcontractor						
	Returned by Contractor						
	Other Submittals:						
	3D Model						
	Submitted by Sub/Fabricator	N,C,D,I	S,F	EX	C	C,I	
	Other Submittals						
	MEP Issues Log	P	C,S	EMA	A	V	
§3.1.7	Modifications						
	Architect's Supplemental Instructions						
	Requests for Proposal						
	Proposal						
	Modification Communications						
§3.1.8	Project Payment Documents						
§3.1.9	Notices and Claims						
	Other:						
§3.1.10	Closeout Documents						
	Record Documents						
	3D As-Builts	N,R,C	S	EX, CD, FD	C	O	

§ 3.2 PROJECT PROTOCOL TABLE DEFINITIONS

(Below are suggested abbreviations and definitions. Delete, modify, or add as necessary.)

Data Format:

O	Microsoft Outlook	C	any one or more file format supported by Navisworks <i>(see Note 1)</i>
W	.doc, Microsoft® Word	D	.dwg, Autodesk AutoCAD <i>(Export to AutoCAD – no proxy graphics, no enablers needed)</i>
E	.xls, Microsoft® Excel	R	.rvt, Autodesk Revit
P	.pdf, Adobe Acrobat Standard	I	.ifc, Information File Classes format
N	.new, Autodesk Navisworks (working file)	H	.html Autodesk Constructware
F	.nwf, Autodesk Navisworks (coordination file)		

Transmitting Party:

O	Owner	S	Subcontractor
A	Architect	F	Fabricator
C	Contractor		

Transmission Method:

EM	Via e-mail	EX	Posted to McGough Extranet – File Transfer <i>(Box)</i>
EMA	As an attachment to an e-mail transmission	FTP	FTP transfer to receiving FTP server <i>(Architects, SharePoint, etc.)</i>
CD	Delivered via Compact Disk	FD	Flash drive
PS	Posted to Project Web site		

Receiving Party:

O	Owner	S	Subcontractor
A	Architects	F	Fabricator
C	Contractor		

Permitted Uses:

(Receiving Party's permitted use(s) of Digital Data)

S	Store and view only	V	Review and Advise
R	Reproduce and distribute	A	Approval
I	Integrate <i>(incorporate additional digital data without modifying data received)</i>	C	Trade Coordination
M	Modify as required to fulfill obligations for the Project	O	Owner Turnover

Notes:

(List by number shown on table.)

1. File types supported by Navisworks 2011

.nwd	.nwf	.nwc	.ipt
.iam.	lpj	dwg,	.dxf
.man	.cv7	.dgn	.prp
.prw	.jt	.3ds	.prj
.dri	.sat	.sab	.x_b
.stp	.rvm	.dwf	.skp
.fbx	.stp	.step	.ifc
.stl	.igs	.iges	.wrl
.wr			

[END OF DOCUMENT]

Exhibit D
STATE SPECIFIC GENERAL CONDITIONS TO THE
SUBCONTRACT GENERAL CONDITIONS
(Labor & Materials - Minnesota)

Incorporation of Terms: *Each and all of the provisions of this Exhibit are hereby incorporated into the Subcontract, so that each and all of such provisions shall constitute a part of the Subcontract. In the event of any conflict or inconsistency between the provisions of this Exhibit, on the one hand, and the provisions of the Subcontract, on the other hand, the provisions of this Exhibit shall be controlling.*

A3.12 Safety. The prevention of accidents arising out of Subcontract Work is the Subcontractor's responsibility, even if Contractor establishes a safety program for the entire Project. The construction work zone is a safety sensitive zone, meaning that anyone in the work zone who is impaired by drug, alcohol, or cannabis usage would threaten the health or safety of any person. Subcontractor shall establish a safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Contract Documents. Subcontractor's personnel shall also attend all safety meetings requested by Contractor. The Subcontractor shall be solely responsible for and shall take all reasonable precautions for the safety of and shall provide reasonable protection to prevent damage, injury or loss to its employees and all other persons who may be affected thereby. Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project and shall stop any part of the Subcontract Work which Contractor deems unsafe until corrective measures satisfactory to Contractor shall have been taken. Contractor's failure to stop Subcontractor's unsafe practices shall not relieve Subcontractor of the responsibility therefor. Subcontractor shall orally notify Contractor immediately following any accident and confirm the notice in writing within twenty-four (24) hours after the accident. A detailed written report shall be furnished if requested by the Contractor. Subcontractor shall indemnify Contractor for fines, damages or expenses incurred by the Contractor because of the Subcontractor's failure to comply with safety requirements.

A5.1 Applications for Payment. By the twenty-fifth (25th) day of each month, the Subcontractor shall submit to Contractor a written application for payment ("**Application for Payment**") in approved form showing the proportion of the Subcontract Work performed and completed as projected through the end of the month from which shall be deducted: (a) Retainage; (b) all previous payments; (c) all charges for materials and services furnished by Contractor to the Subcontractor; and (d) any other retention, charges or deductions provided for in the Contract Documents or Subcontract. If an Application for Payment is received by Contractor after the twenty-fifth (25th) day of the month, Contractor need not submit it to the Owner for approval until the following payment request. Sales and Use Taxes shall be listed separately on each Application for Payment.

The approved form for the Application for Payment shall be the AIA Documents G702 and G703 or other similar forms accepted by Contractor. On the standard form for each Certificate for Payment, form G702, the Subcontractor shall certify that all bills and/or sub-subcontractors have been paid for which previous Certificates for Payment have been issued and upon which payment has been made. Subcontractor shall provide lien waivers in the form acceptable to Owner and Contractor for itself, sub-subcontractors, and suppliers for the previous payment application before the Subcontractor has earned or has the right to receive any subsequent payment. A Schedule of Values, form G703, when submitted shall allocate the entire Subcontract Price to the various portions of the Subcontract Work. Each portion of the Subcontract

Work shall identify by name the entity performing the Subcontract Work. If performed by a sub-subcontractor or supplier, the entire value of the amount to be paid shall be listed at the Subcontract Price for that portion of the Subcontract Work. Updates to the Schedule of Values shall be provided with each Application for Payment. Contractor shall be entitled to rely on the accuracy of the information furnished by Subcontractor and shall not be deemed to have made an examination or verification of the information submitted. If requested by Contractor, Subcontractor shall furnish the necessary supporting data or documentation for verification purposes.

- A5.2 Progress Payments.** Monthly progress payments in approved amounts shall be made to the Subcontractor within ten (10) days after Contractor's receipt of payment from the Owner. Subcontractor shall pay its subcontractors and suppliers within ten (10) business days after receipt of payment from Contractor. Subcontractor shall hold in trust all payments Subcontractor receives with the sole purpose of paying only for Cost of the Work for the Project and agrees that any payment not so used shall be subject to tracing and recovery by the Contractor. Subcontractor agrees to indemnify, save, hold harmless and protect the Project, the Owner and the Contractor from all claims and mechanics' liens arising from Subcontractor's failure to satisfy the requirements set forth in this paragraph, and to furnish satisfactory evidence to the Contractor when and if requested, that it has complied with these requirements.
- A5.3 Joint or Direct Payments.** Notwithstanding anything in the Contract Documents to the contrary, the Contractor may elect, in the Contractor's sole discretion, to make any payment requested by the Subcontractor on behalf of a sub-subcontractor of any tier jointly payable to the Subcontractor and such sub-subcontractor. The Subcontractor and such sub-subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. At the sole discretion of Contractor, Contractor also reserves the right to make payments directly to persons furnishing materials to or through Subcontractor, which payments shall be credited against amounts that otherwise are or would become owed to Subcontractor. In no event shall any joint or direct payment be construed to create any (1) contract between Contractor and sub-subcontractor, (2) obligations from the Contractor to such sub-subcontractor, or (3) rights in such sub-subcontractor against the Contractor. This right of the Contractor to set aside certain sums shall be in addition to any other rights of the Contractor under this Subcontract or the common law.
- A5.4 Final Payment.** Final payment shall be made within ten (10) days after Contractor's receipt of final payment from the Owner for the Subcontract's Work. Contractor's receipt of payment from the Owner is a condition precedent to Contractor's payment obligation. Final payment shall also be subject to the following conditions precedent: (a) the Subcontract Work shall be completed by the Subcontractor and accepted by Contractor, the Owner and the Architect/Engineer; (b) the Subcontractor shall have furnished evidence satisfactory to Contractor that there are no claims, obligations or liens for labor, services, materials, equipment, taxes or other items performed, furnished or incurred for or in connection with the Subcontract Work; (c) the Subcontractor shall have executed and delivered in the form acceptable to Owner and Contractor a general release in favor of Contractor, Contractor's surety, if any, and the Owner; and (d) the Subcontractor shall have delivered to Contractor written consent of its surety, if any, and (e) Subcontractor shall provide all as-builts, warranties, manuals, documents, reports, and other information required under the Contract Documents and/or requested by Contractor. Acceptance of final payment by Subcontractor or its subcontractors or suppliers shall constitute a full and final waiver of claims by that payee except as to those claims previously made in writing as required under this Subcontract and specifically identified as being unsettled in Subcontractor's final Application for Payment.

- A5.5 Conditions to Payment.** Irrespective of any term or inference to the contrary in the Subcontract, Contractor and Subcontractor expressly agree that the Owner's Payment to Contractor on the Subcontractor's account is an absolute condition precedent to Contractor's obligation to pay Subcontractor any progress or final payment pursuant to the Subcontract, except to the extent Subcontractor establishes that the Owner's failure to make payment to Contractor was caused by fault of the Contractor. Subcontractor expressly agrees that it retains the risk of the Owner's insolvency or inability to pay for Subcontractor's Work, and such risk is not transferred to Contractor under the Subcontract.
- A5.6 Effect of Payment.** The making of any progress or final payment by Contractor to the Subcontractor: (a) shall not constitute evidence of full performance; (b) shall not be an acceptance of improper, faulty, or defective Subcontract Work or materials; (c) shall not release the Subcontractor of any of its obligations under this Subcontract; and (d) shall not constitute a waiver of any rights or remedies hereof by Contractor.
- A6.2 Indemnity.** To the fullest extent permitted by law, the Subcontractor shall indemnify the Indemnitees for all Claims to the extent that the underlying injury or damage, including defense costs as outlined in Section A6.3 below, is attributable to the negligent or otherwise wrongful acts or omissions, including breach of a specific contractual duty, of the Subcontractor or any of its sub-subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such Claim is caused in part by an Indemnitee.
- A6.3 Defense.** In addition to and independent from the Subcontractor's obligations under paragraph A6.2, the Subcontractor shall defend the Indemnitees from all Claims asserted against the Indemnitees included in any proceeding (whether arbitration, litigation, or otherwise) arising out of or resulting from the Subcontractor's Work, including without limitation, Claims arising out of the Contractor's operations and/or for which the Contractor may be or may be claimed to be liable (by means of example and not limitation, a Claim that Contractor negligently hired or supervised Subcontractor) or arising out of or resulting from Subcontractor's use of materials, equipment, instrumentalities or other property, whether the same be owned by Contractor, Subcontractor or others, provided, however, Subcontractor is only obligated to defend to the extent that the injury or damage is attributable or alleged in whole or in part, to be attributable to the negligent or otherwise wrongful acts or omissions of the Subcontractor or any of its subcontractors, anyone directly employed by any of them, or anyone for whose acts any of them are liable, together with actual attorneys' fees and costs arising out of such Claims and to enforce the provisions of this Article. The Subcontractor's defense obligation commences with regard to any Claim when the Contractor requests that the Subcontractor defend any Indemnitees from such Claim and continues until the Claim is fully resolved, which includes an allocation of fault and payment in full of the Indemnitee's costs reasonably incurred in defending the Claim.
- A6.4 Unpaid Wage or Benefit Claims.** Subcontractor shall be liable to Owner and/or Contractor for any costs and fees, including attorneys' fees, incurred by Owner and/or Contractor to satisfy any claim made against the Owner and/or Contractor by any of Subcontractor's forces or the forces of any of Subcontractor's sub-subcontractors or suppliers at any tier pursuant to Minn. Stat. § 181.165 or by any other applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or any other legal authority for unpaid wages, fringe benefits, penalties, or resulting liquidated damages. Contractor shall be entitled to offset any of the above referenced costs and fees from amounts owed to Subcontractor under this or any other Agreement between Contractor and Subcontractor.

*Exhibit D – State Specific General Conditions
Subcontract General Conditions
Labor & Materials – Minnesota*

Subcontractor shall collect, or cause its sub-subcontractors and suppliers at all tiers to collect, all information regarding payment of wages related to the Work, including, without limitation, information related to wage theft, earned safe and sick time, paid family leave, or any other benefits required by law regarding all forces of Subcontractor, Subcontractor's sub-subcontractors at any tier, or suppliers at any tier (collectively, the "Payroll Information"). Subcontractor shall maintain, or cause its sub-subcontractors and suppliers at all tiers to maintain, the Payroll Information for three (3) years following completion of the Work.

Upon the request of Contractor, Subcontractor shall provide to Contractor within fifteen (15) calendar days the Payroll Information. Failure of Subcontractor to provide complete responses to Contractor's request for the Payroll Information or to join and defend Contractor and/or Owner from any claim related to Subcontractor's or any of Subcontractor's sub-subcontractors' or suppliers' failure to pay wages or any benefits required by law, shall constitute a default event under this Agreement.

[END OF DOCUMENT]

Exhibit D
STATE SPECIFIC GENERAL CONDITIONS TO THE
SUBCONTRACT GENERAL CONDITIONS
(Materials Only - Minnesota)

Incorporation of Terms: Each and all of the provisions of this Exhibit are hereby incorporated into the Subcontract, so that each and all of such provisions shall constitute a part of the Subcontract. In the event of any conflict or inconsistency between the provisions of this Exhibit, on the one hand, and the provisions of the Subcontract, on the other hand, the provisions of this Exhibit shall be controlling.

A3.9 Safety. The prevention of accidents arising out of Subcontract Work is the Subcontractor's responsibility, even if Contractor establishes a safety program for the entire Project. The construction work zone is a safety sensitive zone, meaning that anyone in the work zone who is impaired by drug, alcohol, or cannabis usage would threaten the health or safety of any person. Subcontractor shall establish a safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Contract Documents. Subcontractor's personnel shall also attend all safety meetings requested by Contractor. The Subcontractor shall be solely responsible for and shall take all reasonable precautions for the safety of and shall provide reasonable protection to prevent damage, injury or loss to its employees and all other persons who may be affected thereby. Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project and shall stop any part of the Subcontract Work which Contractor deems unsafe until corrective measures satisfactory to Contractor shall have been taken. Contractor's failure to stop Subcontractor's unsafe practices shall not relieve Subcontractor of the responsibility therefor. Subcontractor shall orally notify Contractor immediately following any accident and confirm the notice in writing within twenty-four (24) hours after the accident. A detailed written report shall be furnished if requested by the Contractor. Subcontractor shall indemnify Contractor for fines, damages or expenses incurred by the Contractor because of the Subcontractor's failure to comply with safety requirements.

A5.1 Applications for Payment. By the twenty-fifth (25th) day of each month, the Subcontractor shall submit to Contractor a written application for payment ("**Application for Payment**") in approved form showing the proportion of the Subcontract Work performed and completed as projected through the end of the month from which shall be deducted: (a) Retainage; (b) all previous payments; (c) all charges for materials and services furnished by Contractor to the Subcontractor; and (d) any other retention, charges or deductions provided for in the Contract Documents or Subcontract. If an Application for Payment is received by Contractor after the twenty-fifth (25th) day of the month, Contractor need not submit it to the Owner for approval until the following payment request. Sales and Use Taxes shall be listed separately on each Application for Payment.

The approved form for the Application for Payment shall be the AIA Documents G702 and G703 or other similar forms accepted by Contractor. On the standard form for each Certificate for Payment, form G702, the Subcontractor shall certify that all bills and/or sub-subcontractors have been paid for which previous Certificates for Payment have been issued and upon which payment has been made. Subcontractor shall provide lien waivers in the form acceptable to Owner and Contractor for itself, sub-subcontractors, and suppliers for the previous payment application before the Subcontractor has earned or has the right to receive any subsequent payment. A Schedule of Values, form G703, when submitted shall allocate the entire Subcontract Price to the various portions of the Subcontract Work. Each portion of the Subcontract Work shall identify by name the entity performing the Subcontract Work. If performed by a sub-subcontractor or supplier, the entire value of the amount to be paid shall be listed at the Subcontract Price for that portion of the Subcontract Work. Updates to the Schedule of Values shall be provided with each Application for Payment. Contractor shall be entitled to rely on the accuracy of the information furnished by Subcontractor and shall not be deemed to have made an examination or verification of the information submitted. If requested by Contractor, Subcontractor shall furnish the necessary supporting data or documentation for verification purposes.

- A5.2 Progress Payments.** Monthly progress payments in approved amounts shall be made to the Subcontractor within ten (10) days after Contractor's receipt of payment from the Owner. Subcontractor shall pay its subcontractors and suppliers within ten (10) business days after receipt of payment from Contractor. Subcontractor shall hold in trust all payments Subcontractor receives with the sole purpose of paying only for Cost of the Work for the Project and agrees that any payment not so used shall be subject to tracing and recovery by the Contractor. Subcontractor agrees to indemnify, save, hold harmless and protect the Project, the Owner and the Contractor from all claims and mechanics' liens arising from Subcontractor's failure to satisfy the requirements set forth in this paragraph, and to furnish satisfactory evidence to the Contractor when and if requested, that it has complied with these requirements.
- A5.3 Joint or Direct Payments.** Notwithstanding anything in the Contract Documents to the contrary, the Contractor may elect, in the Contractor's sole discretion, to make any payment requested by the Subcontractor on behalf of a sub-subcontractor of any tier jointly payable to the Subcontractor and such sub-subcontractor. The Subcontractor and such sub-subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. At the sole discretion of Contractor, Contractor also reserves the right to make payments directly to persons furnishing materials to or through Subcontractor, which payments shall be credited against amounts that otherwise are or would become owed to Subcontractor. In no event shall any joint or direct payment be construed to create any (1) contract between Contractor and sub-subcontractor, (2) obligations from the Contractor to such sub-subcontractor, or (3) rights in such sub-subcontractor against the Contractor. This right of the Contractor to set aside certain sums shall be in addition to any other rights of the Contractor under this Subcontract or the common law.
- A5.4 Final Payment.** Final payment shall be made within ten (10) days after Contractor's receipt of final payment from the Owner for the Subcontract's Work. Contractor's receipt of payment from the Owner is a condition precedent to Contractor's payment obligation. Final payment shall also be subject to the following conditions precedent: (a) the Subcontract Work shall be completed by the Subcontractor and accepted by Contractor, the Owner and the Architect/Engineer; (b) the Subcontractor shall have furnished evidence satisfactory to Contractor that there are no claims, obligations or liens for materials, taxes or other items performed, furnished or incurred for or in connection with the Subcontract Work; (c) the Subcontractor shall have executed and delivered, in the form acceptable to Owner and Contractor, a general release in favor of Contractor, Contractor's surety, if any, and the Owner; and (d) the Subcontractor shall have delivered to Contractor written consent of its surety, if any, and (e) Subcontractor shall provide all as-builts, warranties, manuals, documents, reports, and other information required under the Contract Documents and/or requested by Contractor. Acceptance of final payment by Subcontractor or its subcontractors or suppliers shall constitute a full and final waiver of claims by that payee except as to those claims previously made in writing as required under this Subcontract and specifically identified as being unsettled in Subcontractor's final Application for Payment.
- A5.5 Conditions to Payment.** Irrespective of any term or inference to the contrary in the Subcontract, Contractor and Subcontractor expressly agree that the Owner's Payment to Contractor on the Subcontractor's account is an absolute condition precedent to Contractor's obligation to pay Subcontractor any progress or final payment pursuant to the Subcontract, except to the extent Subcontractor establishes that the Owner's failure to make payment to Contractor was caused by fault of the Contractor. Subcontractor expressly agrees that it retains the risk of the Owner's insolvency or inability to pay for Subcontractor's Work, and such risk is not transferred to Contractor under the Subcontract.
- A5.6 Effect of Payment.** The making of any progress or final payment by Contractor to the Subcontractor: (a) shall not constitute evidence of full performance; (b) shall not be an acceptance of improper, faulty, or defective Subcontract Work or materials; (c) shall not release the Subcontractor of any of its obligations under this Subcontract; and (d) shall not constitute a waiver of any rights or remedies hereof by Contractor.
- A6.2 Indemnity.** To the fullest extent permitted by law, the Subcontractor shall indemnify the Indemnitees for all Claims to the extent that the underlying injury or damage, including defense costs outlined in Section A6.3, is attributable to the negligent or otherwise wrongful acts or omissions, including breach of a specific contractual duty, of the Subcontractor or any of its sub-subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such Claim is caused in part by an Indemnitee.

- A6.3** **Defense.** In addition to and independent from the Subcontractor’s obligations under paragraph A6.2, the Subcontractor shall defend the Indemnitees from all Claims asserted against the Indemnitees included in any proceeding (whether arbitration, litigation or otherwise) arising out of, or resulting from the Subcontractor’s Work, including without limitation, Claims arising out of the Contractor’s operations and/or for which the Contractor may be or may be claimed to be liable (by means of example and not limitation, a Claim that Contractor negligently hired or supervised Subcontractor) or arising out of or resulting from Subcontractor’s use of materials, equipment, instrumentalities or other property, whether the same be owned by Contractor, Subcontractor or others, provided, however, Subcontractor is only obligated to defend to the extent that the injury or damage is attributable or alleged in whole or in part, to be attributable to the negligent or otherwise wrongful acts or omissions of the Subcontractor or any of its subcontractors, anyone directly employed by any of them, or anyone for whose acts any of them are liable, together with actual attorneys’ fees and costs arising out of such Claims and to enforce the provisions of this Article. The Subcontractor’s defense obligation commences with regard to any Claim when the Contractor requests that the Subcontractor defend any Indemnitees from such Claim and continues until the Claim is fully resolved, which includes an allocation of fault and payment in full of the Indemnitee’s costs reasonably incurred in defending the Claim.
- A6.4** **Unpaid Wage or Benefit Claims.** Subcontractor shall be liable to Owner and/or Contractor for any costs and fees, including attorneys’ fees, incurred by Owner and/or Contractor to satisfy any claim made against the Owner and/or Contractor by any of Subcontractor’s forces or the forces of any of Subcontractor’s sub-subcontractors or suppliers at any tier pursuant to Minn. Stat. § 181.165 or by any other applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or any other legal authority for unpaid wages, fringe benefits, penalties, or resulting liquidated damages. Contractor shall be entitled to offset any of the above referenced costs and fees from amounts owed to Subcontractor under this or any other Agreement between Contractor and Subcontractor.

Subcontractor shall collect, or cause its sub-subcontractors and suppliers at all tiers to collect, all information regarding payment of wages related to the Work, including, without limitation, information related to wage theft, earned safe and sick time, paid family leave, or any other benefits required by law regarding all forces of Subcontractor, Subcontractor’s sub-subcontractors at any tier, or suppliers at any tier (collectively, the “Payroll Information”). Subcontractor shall maintain, or cause its sub-subcontractors and suppliers at all tiers to maintain, the Payroll Information for three (3) years following completion of the Work.

Upon the request of Contractor, Subcontractor shall provide to Contractor within fifteen (15) calendar days the Payroll Information. Failure of Subcontractor to provide complete responses to Contractor’s request for the Payroll Information or to join and defend Contractor and/or Owner from any claim related to Subcontractor’s or any of Subcontractor’s sub-subcontractors’ or suppliers’ failure to pay wages or any benefits required by law, shall constitute a default event under this Agreement.

[END OF DOCUMENT]

Exhibit D
STATE SPECIFIC GENERAL CONDITIONS TO THE
SUBCONTRACT GENERAL CONDITIONS
(Labor & Materials - North Dakota)

***Incorporation of Terms:** Each and all of the provisions of this Exhibit are hereby incorporated into the Subcontract, so that each and all of such provisions shall constitute a part of the Subcontract. In the event of any conflict or inconsistency between the provisions of this Exhibit, on the one hand, and the provisions of the Subcontract, on the other hand, the provisions of this Subcontract shall be controlling.*

A5.1 Applications for Payment. By the twenty-fifth (25th) day of each month, the Subcontractor shall submit to Contractor a written application for payment (“**Application for Payment**”) in approved form showing the proportion of the Subcontract Work performed and completed as projected through the end of the month from which shall be deducted: (a) Retainage; (b) all previous payments; (c) all charges for materials and services furnished by Contractor to the Subcontractor; and (d) any other retention, charges or deductions provided for in the Contract Documents or Subcontract. If an Application for Payment is received by Contractor after the twenty-fifth (25th) day of the month, Contractor need not submit it to the Owner for approval until the following payment request. Sales and Use Taxes shall be listed separately on each Application for Payment.

The approved form for the Application for Payment shall be the AIA Documents G702 and G703 or other similar forms accepted by Contractor. On the standard form for each Certificate for Payment, form G702, the Subcontractor shall certify that all bills and/or sub-subcontractors have been paid for which previous Certificates for Payment have been issued and upon which payment has been made. Subcontractor shall provide lien waivers in the form acceptable to Owner and Contractor for itself, sub-subcontractors, and suppliers for the previous payment application before the Subcontractor has earned or has the right to receive any subsequent payment. A Schedule of Values, form G703, when submitted shall allocate the entire Subcontract Price to the various portions of the Subcontract Work. Each portion of the Subcontract Work shall identify by name the entity performing the Subcontract Work. If performed by a sub-subcontractor or supplier, the entire value of the amount to be paid shall be listed at the Subcontract Price for that portion of the Subcontract Work. Updates to the Schedule of Values shall be provided with each Application for Payment. Contractor shall be entitled to rely on the accuracy of the information furnished by Subcontractor and shall not be deemed to have made an examination or verification of the information submitted. If requested by Contractor, Subcontractor shall furnish the necessary supporting data or documentation for verification purposes.

A5.2 Progress Payments. Monthly progress payments in approved amounts shall be made to the Subcontractor within ten (10) business days after Contractor's receipt of payment from the Owner. Subcontractor shall pay its subcontractors and suppliers within ten (10) business days after receipt of payment from Contractor. Subcontractor shall hold in trust all payments Subcontractor receives with the sole purpose of paying only for Cost of the Work for the Project and agrees that any payment not so used shall be subject to tracing and recovery by the Contractor. Subcontractor agrees to indemnify, save, hold harmless and protect the Project, the Owner and the Contractor from all claims and mechanics' liens arising from Subcontractor's failure to satisfy the requirements set forth in this paragraph, and to furnish satisfactory evidence to the Contractor when and if requested, that it has complied with these requirements.

A5.3 Joint or Direct Payments. Notwithstanding anything in the Contract Documents to the contrary, the Contractor may elect, in the Contractor's sole discretion, to make any payment requested by the Subcontractor on behalf of a sub-subcontractor of any tier jointly payable to the Subcontractor and such sub-subcontractor. The Subcontractor and such sub-subcontractor shall be responsible for the allocation

and disbursement of funds included as part of any such joint payment. At the sole discretion of Contractor, Contractor also reserves the right to make payments directly to persons furnishing materials to or through Subcontractor, which payments shall be credited against amounts that otherwise are or would become owed to Subcontractor. In no event shall any joint or direct payment be construed to create any (1) contract between Contractor and sub-subcontractor, (2) obligations from the Contractor to such sub-subcontractor, or (3) rights in such sub-subcontractor against the Contractor. If Contractor has notice of any claims arising out of Subcontractor's materials furnished for the Project or otherwise on account of any actions or failures to act by the Subcontractor in the performance of this Subcontract, the Contractor may, at its discretion, withhold from payments otherwise due a sum adequate to cover any such said claims and any costs or expenses arising or to arise in connection therewith pending resolution. This right of the Contractor to set aside certain sums shall be in addition to any other rights of the Contractor under this Subcontract or the common law.

- A5.4 Final Payment.** Final payment shall be made within ten (10) days after Contractor's receipt of final payment from the Owner for the Subcontract's Work. Contractor's receipt of payment from the Owner is a condition precedent to Contractor's payment obligation. Final payment shall also be subject to the following conditions precedent: (a) the Subcontract Work shall be completed by the Subcontractor and accepted by Contractor, the Owner and the Architect; (b) the Subcontractor shall have furnished evidence satisfactory to Contractor that there are no claims, obligations or liens for labor, services, materials, equipment, taxes or other items performed, furnished or incurred for or in connection with the Subcontract Work; (c) the Subcontractor shall have executed and delivered in the form acceptable to Owner and Contractor a general release in favor of Contractor, Contractor's surety, if any, and the Owner; and (d) the Subcontractor shall have delivered to Contractor written consent of its surety, if any, and (e) Subcontractor shall provide all as-builts, warranties, manuals, documents, reports, and other information required under the Contract Documents and/or requested by Contractor. Acceptance of final payment by Subcontractor or its subcontractors or suppliers shall constitute a full and final waiver of claims by that payee except as to those claims previously made in writing as required under this Subcontract and specifically identified as being unsettled in Subcontractor's final Application for Payment.
- A5.5 Conditions to Payment.** Irrespective of any term or inference to the contrary in the Subcontract, Contractor and Subcontractor expressly agree that the Owner's Payment to Contractor on the Subcontractor's account is an absolute condition precedent to Contractor's obligation to pay Subcontractor any progress or final payment pursuant to the Subcontract, except to the extent Subcontractor establishes that the Owner's failure to make payment to Contractor was caused by fault of the Contractor. Subcontractor expressly agrees that it retains the risk of the Owner's insolvency or inability to pay for Subcontractor's Work, and such risk is not transferred to Contractor under the Subcontract.
- A5.6 Effect of Payment.** The making of any progress or final payment by Contractor to the Subcontractor: (a) shall not constitute evidence of full performance; (b) shall not be an acceptance of improper, faulty, or defective Subcontract Work or materials; (c) shall not release the Subcontractor of any of its obligations under this Subcontract; and (d) shall not constitute a waiver of any rights or remedies hereof by Contractor.
- A6.2 Indemnity.** To the fullest extent permitted by law, the Subcontractor shall indemnify the Indemnitees for all Claims, but only to the extent caused by the breach of contract and/or other acts or omissions of the Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Subcontractor shall not be required to indemnify an Indemnitee if the liability or obligation was known by the Indemnitee to be unlawful at the time of the act or omission or was the result of that Indemnitee's fraud, willful misconduct, or sole negligence.

Notwithstanding any provision to the contrary, the obligations, if any, of Subcontractor to indemnify shall not extend to liability for the plans and specifications of the Work arising from the errors or omissions of the Owner or its agents, including without limitation, the architect or engineer, and its agents or employees.

A6.3 **Defense.** In addition to and independent from the Subcontractor's obligations under paragraph A6.2, the Subcontractor shall defend the Indemnitees from all Claims asserted against the Indemnitees included in any proceeding (whether arbitration, litigation or otherwise) arising out of or resulting from the Subcontractor's Work, including without limitation, Claims arising out of the Contractor's operations and/or for which the Contractor may be or may be claimed to be liable (by means of example and not limitation, a Claim that Contractor negligently hired or supervised Subcontractor) or arising out of or resulting from Subcontractor's use of materials, equipment, instrumentalities or other property, whether the same be owned by Contractor, Subcontractor or others, provided, however, Subcontractor is only obligated to defend if the injury or damage is attributable or alleged in whole or in part, to be attributable to the negligent or otherwise wrongful acts or omissions of the Subcontractor or any of its subcontractors, anyone directly employed by any of them, or anyone for whose acts any of them are liable, together with actual attorneys' fees and costs arising out of such Claims and to enforce the provisions of this Article. The Subcontractor's defense obligation commences with regard to any Claim when the Contractor requests that the Subcontractor defend any Indemnitees from such Claim and continues until the Claim is fully resolved, including any appeals or expiration of the time for any appeals. The Subcontractor's defense obligations include without limitation paying the legal fees, expert consultant fees, filing fees, arbitrator and/or mediator fees, and all other costs and expenses associated with providing the Indemnitees with a rigorous and zealous defense. The Subcontractor shall perform its defense obligations with due diligence and in good faith through counsel and consultants acceptable to the Contractor at the Subcontractor's expense. If the Contractor reasonably concludes that said counsel and/or consultant could have a conflict of interest concerning claims or defenses he/she might pursue on behalf of the Indemnitees and the Subcontractor, or that said counsel and/or consultant is failing to fulfill the Subcontractor's defense obligations to the Indemnitees, the Contractor may hire separate counsel and/or consultants to fulfill the Subcontractor's defense obligations, and the Subcontractor shall promptly reimburse the Contractor for all associated fees, disbursements and other costs within fifteen days of the date when they are incurred by the Contractor. Nothing herein shall be construed to preclude the Contractor, at any time, from hiring additional counsel and/or consultants at its own expense.

[END OF DOCUMENT]

Exhibit D
STATE SPECIFIC GENERAL CONDITIONS TO THE
SUBCONTRACT GENERAL CONDITIONS
(Materials Only - North Dakota)

***Incorporation of Terms:** Each and all of the provisions of this Exhibit are hereby incorporated into the Subcontract, so that each and all of such provisions shall constitute a part of the Subcontract. In the event of any conflict or inconsistency between the provisions of this Exhibit, on the one hand, and the provisions of the Subcontract, on the other hand, the provisions of this Subcontract shall be controlling.*

A5.1 Applications for Payment. By the twenty-fifth (25th) day of each month, the Subcontractor shall submit to Contractor a written application for payment (“**Application for Payment**”) in approved form showing the proportion of the Subcontract Work performed and completed as projected through the end of the month from which shall be deducted: (a) Retainage; (b) all previous payments; (c) all charges for materials and services furnished by Contractor to the Subcontractor; and (d) any other retention, charges or deductions provided for in the Contract Documents or Subcontract. If an Application for Payment is received by Contractor after the twenty-fifth (25th) day of the month, Contractor need not submit it to the Owner for approval until the following payment request. Sales and Use Taxes shall be listed separately on each Application for Payment.

The approved form for the Application for Payment shall be the AIA Documents G702 and G703 or other similar forms accepted by Contractor. On the standard form for each Certificate for Payment, form G702, the Subcontractor shall certify that all bills and/or sub-subcontractors have been paid for which previous Certificates for Payment have been issued and upon which payment has been made. Subcontractor shall provide lien waivers in the form acceptable to Owner and Contractor for itself, sub-subcontractors, and suppliers for the previous payment application before the Subcontractor has earned or has the right to receive any subsequent payment. A Schedule of Values, form G703, when submitted shall allocate the entire Subcontract Price to the various portions of the Subcontract Work. Each portion of the Subcontract Work shall identify by name the entity performing the Subcontract Work. If performed by a sub-subcontractor or supplier, the entire value of the amount to be paid shall be listed at the Subcontract Price for that portion of the Subcontract Work. Updates to the Schedule of Values shall be provided with each Application for Payment. Contractor shall be entitled to rely on the accuracy of the information furnished by Subcontractor and shall not be deemed to have made an examination or verification of the information submitted. If requested by Contractor, Subcontractor shall furnish the necessary supporting data or documentation for verification purposes.

A5.2 Progress Payments. Monthly progress payments in approved amounts shall be made to the Subcontractor within ten (10) business days after Contractor's receipt of payment from the Owner. Subcontractor shall pay its subcontractors and suppliers within ten (10) business days after receipt of payment from Contractor. Subcontractor shall hold in trust all payments Subcontractor receives with the sole purpose of paying only for Cost of the Work for the Project and agrees that any payment not so used shall be subject to tracing and recovery by the Contractor. Subcontractor agrees to indemnify, save, hold harmless and protect the Project, the Owner and the Contractor from all claims and mechanics' liens arising from Subcontractor's failure to satisfy the requirements set forth in this paragraph, and to furnish satisfactory evidence to the Contractor when and if requested, that it has complied with these requirements.

A5.3 Joint or Direct Payments. Notwithstanding anything in the Contract Documents to the contrary, the Contractor may elect, in the Contractor's sole discretion, to make any payment requested by the

Subcontractor on behalf of a sub-subcontractor of any tier jointly payable to the Subcontractor and such sub-subcontractor. The Subcontractor and such sub-subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. At the sole discretion of Contractor, Contractor also reserves the right to make payments directly to persons furnishing materials to or through Subcontractor, which payments shall be credited against amounts that otherwise are or would become owed to Subcontractor. In no event shall any joint or direct payment be construed to create any (1) contract between Contractor and sub-subcontractor, (2) obligations from the Contractor to such sub-subcontractor, or (3) rights in such sub-subcontractor against the Contractor. If Contractor has notice of any claims arising out of Subcontractor's materials furnished for the Project or otherwise on account of any actions or failures to act by the Subcontractor in the performance of this Subcontract, the Contractor may, at its discretion, withhold from payments otherwise due a sum adequate to cover any such said claims and any costs or expenses arising or to arise in connection therewith pending resolution. This right of the Contractor to set aside certain sums shall be in addition to any other rights of the Contractor under this Subcontract or the common law.

- A5.4 Final Payment.** Final payment shall be made within ten (10) days after Contractor's receipt of final payment from the Owner for the Subcontract's Work. Contractor's receipt of payment from the Owner is a condition precedent to Contractor's payment obligation. Final payment shall also be subject to the following conditions precedent: (a) the Subcontract Work shall be completed by the Subcontractor and accepted by Contractor, the Owner and the Architect; (b) the Subcontractor shall have furnished evidence satisfactory to Contractor that there are no claims, obligations or liens for materials, taxes or other items performed, furnished or incurred for or in connection with the Subcontract Work; (c) the Subcontractor shall have executed and delivered in the form acceptable to Owner and Contractor a general release in favor of Contractor, Contractor's surety, if any, and the Owner; and (d) the Subcontractor shall have delivered to Contractor written consent of its surety, if any, and (e) Subcontractor shall provide all as-builts, warranties, manuals, documents, reports, and other information required under the Contract Documents and/or requested by Contractor. Acceptance of final payment by Subcontractor or its subcontractors or suppliers shall constitute a full and final waiver of claims by that payee except as to those claims previously made in writing as required under this Subcontract and specifically identified as being unsettled in Subcontractor's final Application for Payment.
- A5.5 Conditions to Payment.** Irrespective of any term or inference to the contrary in the Subcontract, Contractor and Subcontractor expressly agree that the Owner's Payment to Contractor on the Subcontractor's account is an absolute condition precedent to Contractor's obligation to pay Subcontractor any progress or final payment pursuant to the Subcontract, except to the extent Subcontractor establishes that the Owner's failure to make payment to Contractor was caused by fault of the Contractor. Subcontractor expressly agrees that it retains the risk of the Owner's insolvency or inability to pay for Subcontractor's Work, and such risk is not transferred to Contractor under the Subcontract.
- A5.6 Effect of Payment.** The making of any progress or final payment by Contractor to the Subcontractor: (a) shall not constitute evidence of full performance; (b) shall not be an acceptance of improper, faulty, or defective Subcontract Work or materials; (c) shall not release the Subcontractor of any of its obligations under this Subcontract; and (d) shall not constitute a waiver of any rights or remedies hereof by Contractor.
- A6.2 Indemnity.** To the fullest extent permitted by law, the Subcontractor shall indemnify the Indemnitees for all Claims, but only to the extent caused by the breach of contract and/or other acts or omissions of the Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Subcontractor shall not be required to indemnify an Indemnitee if the liability or obligation was known by the Indemnitee to be unlawful at the time of the act or omission or was the result of that Indemnitee's fraud, willful misconduct, or sole negligence.

Notwithstanding any provision to the contrary, the obligations, if any, of Subcontractor to indemnify shall not extend to liability for the plans and specifications of the Work arising from the errors or omissions of the Owner or its agents, including without limitation, the architect or engineer, and its agents or employees.

A6.3 Defense. In addition to and independent from the Subcontractor’s obligations under paragraph A6.2, the Subcontractor shall defend the Indemnitees from all Claims asserted against the Indemnitees included in any proceeding (whether arbitration, litigation or otherwise) arising out of or resulting from the Subcontractor’s Work, including without limitation, Claims arising out of the Contractor’s operations and/or for which the Contractor may be or may be claimed to be liable (by means of example and not limitation, a Claim that Contractor negligently hired or supervised Subcontractor) or arising out of or resulting from Subcontractor’s use of materials, equipment, instrumentalities or other property, whether the same be owned by Contractor, Subcontractor or others, provided, however, Subcontractor is only obligated to defend if the injury or damage is attributable or alleged in whole or in part, to be attributable to the negligent or otherwise wrongful acts or omissions of the Subcontractor or any of its subcontractors, anyone directly employed by any of them, or anyone for whose acts any of them are liable, together with actual attorneys’ fees and costs arising out of such Claims and to enforce the provisions of this Article. The Subcontractor’s defense obligation commences with regard to any Claim when the Contractor requests that the Subcontractor defend any Indemnitees from such Claim and continues until the Claim is fully resolved, including any appeals or expiration of the time for any appeals. The Subcontractor’s defense obligations include without limitation paying the legal fees, expert consultant fees, filing fees, arbitrator and/or mediator fees, and all other costs and expenses associated with providing the Indemnitees with a rigorous and zealous defense. The Subcontractor shall perform its defense obligations with due diligence and in good faith through counsel and consultants acceptable to the Contractor at the Subcontractor’s expense. If the Contractor reasonably concludes that said counsel and/or consultant could have a conflict of interest concerning claims or defenses he/she might pursue on behalf of the Indemnitees and the Subcontractor, or that said counsel and/or consultant is failing to fulfill the Subcontractor’s defense obligations to the Indemnitees, the Contractor may hire separate counsel and/or consultants to fulfill the Subcontractor’s defense obligations, and the Subcontractor shall promptly reimburse the Contractor for all associated fees, disbursements and other costs within fifteen days of the date when they are incurred by the Contractor. Nothing herein shall be construed to preclude the Contractor, at any time, from hiring additional counsel and/or consultants at its own expense.

[END OF DOCUMENT]

EXHIBIT G

MCGOUGH QUALITY PROGRAM REQUIREMENTS

E1. Quality Program. The Quality Program Requirements set forth in this Exhibit G are designed to set forth the expectation of performing the work correctly the first time, planning and coordinating the work, eliminating errors, eliminating rework, maintaining efficient trade flow, and avoiding unnecessary delays. Accordingly, if required by the Contractor, the Quality Program Requirements shall be integrated with the administrative and supervisory efforts of the project team, whenever possible, so as to create an environment of continual improvement and eliminate waste.

In coordination with its respective superintendents and project managers, Subcontractor's Quality Manager will be the focal point for all quality management issues relating to the Subcontract Work. Subcontractor's Quality Manager must:

1. Verify submittals follow project requirements, including coordination and compliance with the Contract Documents.
2. Prepare for, participate in and document preconstruction, pre-installation and coordination meetings to ensure work is adequately planned and coordinated.
3. Participate in weekly work plans, pull plans and coordination meetings for respective Definable Features of Work (as defined in Section A3.1 of the General Conditions).
4. Participate in and document first-work inspections, follow-up inspections and completion inspections to ensure work complies with this Subcontract, Contract Documents, and any applicable manufacturer's installation instructions.
5. Prior to commencement of Subcontractor Work, prepare a project specific-quality plan. See Section A3.1 above for required elements of the plan.
6. Provide copies of the project-specific quality plan to Contractor to conduct initial, follow up and final inspections of the Subcontract Work, if applicable. If Contractor provides comments on the project-specific quality plan, Subcontractor shall address Contractor's comment and resubmit the plan to Contractor.
7. Provide materials, equipment, labor and other assistance as may be required for field testing and inspections in accordance with this Subcontract and Contract Documents.
8. Log, track, monitor progress, and report upon correction of its defective or improper Subcontract Work.

E2. Pre-installation Requirements. Upon the Contractor's request, Pre-installation Meetings will be conducted for Definable Features of Work. Subcontractor shall attend the Pre-installation meeting, in which the attendees will coordinate construction means, methods, techniques, sequences, procedures and results (including testing and inspections) for the Subcontract Work, review the project-specific quality plan, and verify all submittals related to the Definable Feature of Work have been submitted and approved. The attendees shall address the installation of the Subcontract Work and shall set forth at least the following:

1. Delivery status of required materials, equipment, utilities, and availability of required labor

2. A site logistics plan, including but not limited to materials storage areas, special mixing areas (if applicable), any special materials storage or environmental control requirements, the coordination and construction of mock-ups, and any other elements as required by the Contractor
3. Status of completion for predecessor activities and sequencing of Subcontract Work
4. Installation process
5. Quality inspections (in accordance with the inspection requirements listed below)

Prior to commencing the installation of any Subcontract Work, Subcontractor will accept the substrate and adjacent work. Substrate conditions or deficiencies that do not conform to the Contract Documents and/or the Manufacturer's written installation instructions for the products being installed will need approval in writing by Contractor's Project team before proceeding. However, Contractor's approval shall not relieve Subcontractor of its obligations to perform the Subcontract Work in accordance with this Agreement or the Contract Documents. Subcontractor shall promptly report to Contractor any conditions or deficiencies discovered by, or made known to, Subcontractor in its review of the substrate and adjacent work. If Subcontractor fails to perform the obligations in this section, the Subcontractor shall be responsible for such cost or damages to correct, replace and/or re-execute faulty or defective Subcontract Work as would have been avoided if Subcontractor had performed such obligations.

E3. Inspection Requirements. Upon Contractor's request, Subcontractor shall participate in and/or perform the following quality inspections of the Subcontract Work:

1. Mock-ups and/or first work reviews, as required by the Contract Documents or high-risk construction assemblies as identified by Contractor, shall be constructed. Mockups may be either in-situ or freestanding. Further inspection of the mock-up may include: (1) performance testing; (2) third party inspections; (3) aesthetic considerations; (4) Owner, Architect, and/or Engineer observations; (5) any other inspections as required by Contractor.
2. At the end of each workday, for each Definable Feature of Work, Subcontractor shall complete a project-specific quality plan audit. The audit shall identify the location of the subcontract Work installed, and shall verify that the work was completed in accordance with the plan.
3. Upon the completion of a Definable Feature of Work, Subcontractor shall notify Contractor of the same so as to allow Contractor to perform an initial inspection of the completed work. Contractor shall note any observed deficiencies in an issues log, and shall inform Subcontractor of any improper or defective Subcontractor Work. Correction of any defective Subcontractor Work shall be in accordance with section A3.14. Contractor may conduct additional inspections of any Subcontractor Work.
4. Any third party inspections, including those conducted by the authority having jurisdiction, special inspections, shall be conducted as required by the Contractor and/or in accordance with the Contract Documents.
5. Any final inspections, including punch list completion, final acceptance testing, system operation and sequence verification, commissioning, shall be conducted as required by the Contractor and/or in accordance with the Contract Documents.



Any inspections conducted by the Contractor are for the benefit of the Contractor and for the purpose of facilitating coordination and construction of the Project in accordance with the overall Project Schedule. Contractor's inspections or approvals as required herein shall not relieve Subcontractor of its obligations to perform the Subcontract Work in accordance with this Agreement or the Contract Documents.

EXHIBIT C
PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS

C1. CONTRACTUAL RELATIONSHIP

- C1.1 Independent Contractor.** In performing the Services under this Agreement, Consultant shall operate as, and have the status of, an independent contractor and shall not act as or be an agent or employee of Contractor or Owner.
- C1.2 Standard of Care.** The Consultant shall furnish or provide the Services in accordance with the Prime Contract, and the Owner's requirements, as outlined in the relevant data defining the Project as **Exhibit A.** Services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, and complexity, during the time in which the Services are provided.
- C1.3 Relationship of the Parties.** The Consultant accepts a relationship of trust and confidence with the Contractor for this Agreement and will cooperate and exercise the skill and judgment required above. The Consultant represents that it possesses the skill, expertise, and licensing to perform the Services. The Contractor and Consultant agree to work together on the basis of mutual trust, good faith, and fair dealing, and shall take actions reasonably necessary to enable each other to complete the Project in a timely, efficient, and economical manner. The Contractor and the Consultant shall perform their obligations with integrity, ensuring at a minimum to: (a) each avoid conflicts of interest and disclose any promptly to the other party; and (b) each warrant that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other party, including its agents, officers, and employees, subconsultants, or others for whom they may be liable, to secure preferential treatment.

C2. CONTRACT DOCUMENTS

- C2.1 Contract Documents.** This Agreement, including any attachments and exhibits, the Prime Contract and all documents referenced therein, plans, specifications, project manuals, general and supplementary conditions, special conditions, invitations to bidders, instructions to bidders, addenda, bonds, and subsequent modifications or revisions thereto constitute the contract documents ("**Contract Documents**"). Consultant's proposal or bid shall not be considered a Contract Document and shall not limit Consultant's obligations hereunder. All Contract Documents are fully incorporated herein by reference. Consultant acknowledges that Contractor has made available to Consultant all of the above documents, subject to Contractor redacting certain information deemed to be confidential, and Consultant shall be responsible for obtaining copies pertinent to its Services.
- C2.2 Comparison of Documents.** Consultant represents that it has carefully studied and understands the Contract Documents, has obtained clarification of all known inconsistencies, errors, omissions or other discrepancies in the Contract Documents.

- C2.3 Examination of Conditions.** The Consultant represents that it: (a) has visited the Project Site; (b) has evaluated the general and local conditions which can affect the Services or the cost thereof; and (c) has analyzed all Contract Documents in relation to each other and to the Project Site, the existing or proposed structure, the condition of the soils, the obstacles which may be encountered, and all other conditions having a bearing upon the performance of the Services.
- C2.4 Assumption of Prime Contract Obligations.** The Consultant assumes toward the Owner and Contractor and agrees to all obligations, responsibilities, liabilities, and limitations on rights that Contractor assumes toward and agrees to with the Owner by Prime Contract, insofar as they are applicable to the Services. The provisions of this Agreement shall be in addition to and not in substitution for any of the provisions of the other Contract Documents. To the extent any provision of the Prime Contract is inconsistent with any provision of this Subcontract, this Subcontract shall govern; provided, however, that if the Prime Contract imposes a more stringent or extensive requirement on Consultant than this Subcontract, the more stringent or extensive requirement shall prevail. The Consultant shall bind its own subconsultants and suppliers to assume toward the Owner, Contractor and Consultant the same duties and obligations that the Consultant assumes toward Contractor.

C3. CONSULTANT'S GENERAL RESPONSIBILITIES

- C3.1 Project Requirements.** The Consultant, in order to determine the requirements of the Services, shall conduct a preliminary evaluation of the information set forth in **Exhibit A**. The Consultant shall confirm its understanding of such requirements with the Contractor and shall assist the Contractor to refine or make clarifications to the Owner's program for the Project.
- C3.2 Design Documents.** The Consultant shall not proceed with the development of successive design documents until receiving written approval from the Contractor. The Consultant shall promptly revise without additional compensation:
- C.3.2.1** those documents which have not been previously approved by the Contractor and to which the Contractor has reasonable objections;
 - C.3.2.2** those documents identified by the Contractor as presenting constructability problems; and
 - C.3.2.3** those documents needing revisions to reflect clarifications and assumptions and allowances on which a guaranteed maximum price is based.
- C3.3** The Consultant shall assist the Contractor with filing required documents with governmental authorities having jurisdiction over the Project, including filing documents required to obtain permits necessary for construction of the Project.
- C3.4** The Consultant shall not be responsible for the acts or omissions of the Owner, the Contractor, and subcontractors, and their respective agents or employees, or any other persons or entities performing work on the Project who are not under the direct control or authority of the Consultant.

C4. COMPENSATION AND PAYMENT

C4.1 Applications for Payment. Reserved (see State Specific Exhibit for terms).

C4.2 Progress Payments. Reserved (see State Specific Exhibit for terms).

C4.3 Final Payment. Reserved (see State Specific Exhibit for terms).

C4.4 Conditions to Payment. Reserved (see State Specific Exhibit for terms).

C4.5 Effect of Payment. Reserved (see State Specific Exhibit for terms).

C4.6 Withholding. Should the Consultant or its consultants cause damage to the Project, or fail to perform or otherwise be in default under the terms of this Agreement, the Owner shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect the Owner from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

C4.7 Records. The Consultant's expense records shall be maintained in accordance with generally accepted accounting principles and shall be available to the Contractor at mutually convenient times for all Services to be compensated on the basis of actual cost.

C5. INDEMNITY

C5.1 Definitions.

C5.1.1 "Claims" as used in this Article C5 shall mean any and all claims, costs, liabilities, liens, demands, causes of action, for or on account of any injury to persons, damage to property and the loss of use therefrom (including without limitation, the Services), fines, penalties, assessments, or any other loss of whatever kind or nature arising out of or relating to the Project and/or the Services, together with actual attorneys' fees and costs arising out of such Claim and to enforce the provisions of this Article.

C5.1.2 "Indemnitees" as used in this Article 5 shall mean Contractor and its agents and employees, the Owner and its agents and employees, and all others whom Contractor is obligated to defend and/or indemnify under the Contract Documents.

C5.2 Indemnity. Reserved (see State Specific Exhibit for terms).

C5.3 Defense. Reserved (see State Specific Exhibit for terms).

C5.4 Insurance. CONSULTANT FURTHER AGREES TO OBTAIN, MAINTAIN AND PAY FOR SUCH PROJECT-SPECIFIC INSURANCE AS WILL INSURE THE PROVISIONS OF THIS ARTICLE C5.

C5.5 Remedies. The defense and indemnification obligations under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor, any Consultant or sub-consultants, under worker's compensation acts, disability benefit acts or other employee benefit acts. This defense and indemnification obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity or defense which exist in this Agreement or the Contract Documents or at law.

Consultant's defense and indemnity obligations shall survive termination of this Agreement and final payment. In the event of a claim against an Indemnitee, Contractor may, in its sole discretion, reserve, retain or apply any moneys owed to the Consultant for purpose of resolving such claim.

C6. ASSIGNMENT

C6.1 Approval of Sub-Consultants. The Consultant shall not engage the services of any consultant without first obtaining the Contractor's written approval, which approval shall not be unreasonably withheld. Such approval by the Contractor shall not be deemed to create any contractual relationship between the Contractor and any such consultant, except that the Contractor and Owner shall be considered the intended beneficiary of the performance of their services. The Consultant shall not include any limits of liability in its agreements with any consultants without the prior written approval of the Contractor. The Consultant shall bind its consultants in the same manner as the Consultant is bound to the Contractor under this Agreement.

C6.2 Effect of Assignment. Neither this Agreement nor any monies due or to become due hereunder shall be assignable without the prior written consent of Contractor. Any assignment without prior written consent shall be of no effect and shall vest no right in the assignee against Contractor. Contractor's consent to any assignment shall not relieve Consultant of any of its obligations under this Agreement and Consultant shall remain as fully responsible for the defaults, acts, and omissions of its assignees and all persons directly or indirectly employed by them as it is for its own defaults, acts, and omissions, and those of its own officers, agents, and employees.

C7. TIME

C7.1 Time for Services. Time is of the essence. The Consultant shall provide the Services required by this Agreement in conformance with the most recent Project Schedule provided by the Contractor.

C7.2 Delays. Should the act, omission, or neglect of Contractor interfere or cause delay for the Consultant's commencement, prosecution, or completion of the Services, then the Consultant shall be entitled to an extension of time and an equitable adjustment to the Subcontract Price.

Should any other cause beyond the Consultant's control and not due to any fault, neglect, act or omission on its part, interfere or cause delay for the Consultant's commencement, prosecution or completion of the Services, then the Consultant shall be entitled to an extension of time and, to the extent permitted under the Prime Contract, an equitable adjustment to the Subcontract Price. Such extension shall not exceed the period granted to Contractor by the Owner under the Contract Documents for the same cause of delay. Consultant shall be entitled to an extension of time only if Consultant delivers notice and a request for extension in writing to Contractor within the shorter of (i) seventy-two (72) hours of the commencement of any claimed interference or delay or (ii) forty-eight (48) hours prior to the date on which Contractor must notify the Owner of the delay under the Prime Contract.

C8. TERMINATION

C8.1 Contractor shall have the right to terminate this Agreement, in whole or in part, with or without cause, by providing Consultant five (5) days' written notice of termination. Upon expiration of the five (5) days, this Agreement will terminate and Consultant shall be paid the amount earned or reimbursable to it hereunder to the time specified in the notice of termination, including all reasonable costs incurred by Consultant in connection with discontinuing the Services referenced herein. Consultant shall have no further claim against Contractor with respect to such termination.

C9. TAXES AND PERMITS

C9.1 **Taxes.** Consultant agrees to pay and comply with and hold Contractor harmless against the payment of all contributions, premiums, or taxes of whatever nature, including any interest or penalties, which may be payable by it under any federal, state, or local laws arising out of performance of Services pursuant to this Agreement.

C9.2 **Permits.** Consultant shall obtain and pay for all permits, licenses, fees, and certificates of inspection which may be necessary for the prosecution and completion of its duties and obligations hereunder, and shall arrange for any applicable inspections and approvals by public officials.

C10. LAWS, REGULATIONS, AND ORDINANCES

C10.1 Consultant agrees to be bound by, and at its own cost, comply with all federal, state, and local laws, codes, ordinances, regulations, and licensing requirements applicable to performance of its duties and obligations hereunder.

C11. DISPUTE RESOLUTION

C11.1 **Method of Dispute Resolution.** In the event any dispute or claim between Contractor and Consultant which directly or indirectly involves the Owner, or in the event of any dispute or claim between Contractor and Consultant caused by or arising out of conduct for which the Owner may be responsible, Consultant agrees to be bound to Contractor and Contractor agrees to be bound to Consultant to the same extent the Contractor is bound to Owner by the terms of the Prime Contract and by all procedures and resulting decisions, findings, determinations and/or awards made thereunder by the person or entity so authorized in the Prime Contract, or by an administrative agency, board, court of competent jurisdiction, or arbitration. The Contractor's good faith determination of whether any Consultant claim arises out of the Prime Contract is one for which the Owner may be responsible, shall be final and conclusive. If any dispute or claim of Consultant is prosecuted or defended by Contractor together with any of Contractor's disputes or claims, and Consultant is not directly a party, Consultant agrees to cooperate fully with Contractor and to furnish all documents, statements, witnesses and other information required by the Contractor for such purpose and shall pay or reimburse Contractor for all expenses and costs, including reasonable attorneys' fees incurred in connection therewith, to the extent of Consultant's interest in such claim or dispute.

C11.2 **Procedure and Timing.** Consultant agrees to be bound by the procedure and final determination as specified in the Prime Contract and, unless prohibited under applicable state statutes, agrees it will not take, or will stay or suspend, any other action with respect to such

claims (including, but not limited to, actions commenced pursuant to Federal Miller Act, lien statutes or other state bond or retainage act) and will pursue no independent litigation with respect thereto, pending final determination of any resolution procedure between Owner and Contractor, which will be binding on Consultant. Consultant's timely presentation, cooperation and participation in any determination of a dispute under the Prime Contract, including any and all appeals under the dispute provision(s) of the Prime Contract and Consultant's timely payment of its share of the claim pursuant costs shall be conditions precedent to pursuit of any action by Consultant against Contractor with respect to any such claim or dispute. It is expressly understood and agreed that as to any and all claims asserted by Consultant in connection with this Project arising from actions of or fault of the Owner, the Contractor shall not be liable to the Consultant for any greater amount than Owner is liable to Contractor, less any mark ups or costs incurred by the Contractor. As to any claims asserted by the Consultant for or on account of acts or omissions of the Owner or its agents, at the sole option of Contractor, Consultant agrees to prosecute such claims in Contractor's name. Consultant shall have full responsibility for the preparation and presentation of such claims and shall bear all expense thereof, including attorneys' fees.

- C11.3 Joinder in Related Proceedings.** In the event Contractor is involved in a separate arbitration, litigation, mediation or other legal proceeding in which any aspect of the Consultant's Work or entitlement to payment is at issue, or questions of law or fact common to the Consultant's performance under the Agreement are involved; or, if complete relief cannot be afforded in such proceeding without the Consultant's participation therein, Consultant hereby consents, upon written demand by Contractor, to its consolidation or joinder in that proceeding to the applicability of any rules or procedures applicable to such proceeding; and hereby waives any objections to the location or forum in which the proceeding is pending. In the event Consultant has initiated litigation against Contractor at the time Contractor's demand for consolidation or joinder is received, and that proceeding cannot be consolidated with the proceeding in which the Contractor is involved, Consultant agrees to dismiss or, in the event dismissal would prejudice Consultant's rights, stay the litigation.
- C11.4 Governing Law, Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state where the Project is located. Subject to Section C11.3, for any action or proceeding involving claims and disputes between Contractor and Consultant arising out of or in connection with the Agreement or the Work, Contractor and Consultant expressly and unconditionally: (a) agree that the venue for litigation shall be at the place where the Project is located; and (b) waive the right to a trial by jury in the action or proceeding.
- C11.5 Continued Performance Required.** Consultant acknowledges the importance of performing and completing the Work and its other obligations under the Agreement in a timely manner. Consultant agrees that its rights in connection with any claim or dispute with Contractor in connection with the Agreement shall be determined as provided in this Article C11 or elsewhere in the Contract Documents, and that it shall not be entitled to suspend or otherwise delay its performance and completion of the Services or the performance of its other obligations under the Agreement based on any alleged breach by Contractor or claim or dispute between the parties, regardless of whether such breach, claim or dispute is the subject of dispute resolution between Contractor and Consultant.

C12. CONFIDENTIALITY

In the course of performance of the Services, Contractor may provide access to certain Proprietary Information. Proprietary Information refers to any information that is not generally known outside of Contractor that relates to the current or reasonably foreseeable business of Contractor, and which Contractor has expressly or implicitly protected from unrestricted use by persons not associated with Contractor. All the materials provided by Contractor to Consultant in connection with the Services are expressly denominated as Proprietary Information. Consultant agrees not to divulge or use any Proprietary Information for its own or another's benefit, either during or after the term of association with Contractor and shall not accept any compensation, tangible or intangible, for work which would involve the use or disclosure of Proprietary Information. All documents or other tangible property relating in any way to Contractor, which are conceived or generated by Consultant or come into Consultant's possession as a result of Consultant's association with Contractor, shall be and remain the exclusive property of Contractor. All such tangible property shall be returned to Contractor upon the termination of the relationship between Contractor and Consultant, or at such earlier time as may be requested by Contractor.

C13. OWNERSHIP OF INSTRUMENTS OF SERVICE AND DATA

All reports, drawings, data sheets, recommendations, photographs, computer print-outs, design criterion, calculations, electronic data and information or materials of a similar nature are and shall be the property of Contractor, and Contractor shall have the right without limitation, to assign, access and use all such documents, information, and electronic data. All materials and information that are the property of Contractor and all copies or duplications thereof shall be delivered to Contractor by Consultant, if requested by Contractor, upon completion of the Services. Consultant may retain electronic data and one complete set of reproducible copies of all such design data, drawings, estimates, calculations, and specifications. Consultant shall comply with all reasonable requests of Contractor so that Contractor may protect and preserve all property interests herein conveyed. The provisions of this paragraph shall survive termination of this Agreement.

C14. ELECTRONIC FILE SHARING

AIA Document E201 – 2007 Digital Data Protocol Exhibit is incorporated into this Agreement.

C15. MISCELLANEOUS

C15.1 Rights Cumulative. All of Contractor's remedies herein are cumulative and in addition to all other remedies at law or in equity.

C15.2 Entire Agreement. This Agreement comprises the entire agreement between the parties hereto and is effective on the date set forth above. No other agreement, representation or understanding concerning the same has been made and no oral statement, understanding or agreement shall affect the terms hereof.

C15.3 Severability. To the best knowledge and belief of the parties, this Agreement contains no provision that is contrary to federal or state law, ruling or regulation. However, if any provision of this Agreement shall conflict with any such law, ruling or regulation, then such provision shall continue in effect only to the extent permissible. In the event any provision is thus inoperative, the remaining provisions shall, nevertheless, remain in full force and effect.

- C15.4 Successors.** This Agreement shall be binding on and inure to the benefit of the heirs, successors and assigns of the parties hereto.
- C15.5 Non-Waiver.** This Agreement may not be changed or amended and no provision may be waived by Contractor except in writing signed by Contractor's authorized officers or agents. If Contractor does not insist in any instance upon strict compliance with any of the provisions of this Agreement, or exercise any options provided, this shall not be construed as a waiver of its right to thereafter require such compliance or to exercise such option.
- C15.6 Notice.** Any notice required to be given by the terms and provisions of the Agreement or any laws, or which either party may desire to give hereunder, either by Contractor or Consultant, shall be in writing and shall be personally delivered, forwarded by registered or certified mail (return receipt requested), sent by overnight delivery service or by facsimile, and shall be addressed to the representatives as described above at the address stated on the first page of this Agreement. Either party may change the address to which any notice referred to herein is to be sent by giving written notice of such change of address to the other party in the manner provided above. Notice personally delivered, sent by overnight delivery service, or sent by facsimile shall be effective on the date of delivery. Notice given by certified mail shall be effective as of the earlier of (i) date of receipt, or (ii) three days after mailing, properly addressed and postage prepaid.
- C15.7 Infringement.** The Consultant shall pay all royalties and license fees and shall defend all suits or claims for infringement of any patent, trademark or copyright arising out of the Services under this Agreement.
- C15.8 Assignment and Subletting.** This Agreement shall not be assignable without the prior written consent of Contractor, nor shall the whole or any part of this Agreement be sublet without prior written consent. Any such assignment or subletting without prior written consent shall be void and of no effect and shall vest no right or right of action in the assignee or Consultant against Contractor.
- C15.9 Sexual Harassment.** Consultant shall implement a policy and procedures to prohibit sexual harassment by any employee, Consultant or agent. Any instance of such conduct will be subject to timely and appropriate action by Contractor, including, but not limited to, immediate termination of the Agreement.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:

1. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education or housing;
2. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education or housing; or,

3. that conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education or housing, or creating an intimidating, hostile or offensive employment, public accommodations, public services, educational or housing environment>

The prohibition extends to all persons at the Project Site and includes conduct or communications to pedestrians or drivers using sidewalks or streets near the Project Site, as well as persons employed in nearby businesses.

- C15.10 Concealed Weapons.** Contractor prohibits all employees and Consultants and their employees or agents from carrying or possessing firearms while acting in the course and scope of employment. Violation of this policy may result in termination of the Consultant.
- C15.11 Advertising.** No advertising signs will be allowed on the jobsite.
- C15.12 Photographs.** No photographs, videos, CDs, multimedia or images of any kind are allowed to be taken without the express written permission of the Job Superintendent.
- C15.13 Hard Hats and Safety Glasses.** Hard hats and ANSI-approved safety glasses must be worn at all times by everyone, including Contractor's and Consultants' personnel and visitors, when working on or visiting the jobsites.
- C15.14 Smoking.** No smoking will be allowed on this jobsite or its surrounding grounds unless otherwise specified by the Job Superintendent.
- C15.15 Neutral Interpretation.** The parties expressly agree that both parties have had the opportunity to negotiate and to obtain assistance of counsel in reviewing this Agreement prior to execution. This Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.
- C15.16 Counterparts.** This Agreement may be executed by the Contractor and Consultant separately in counterparts which, taken together, shall constitute an original. This contract may be executed by facsimile, email or electronic signatures, which shall be deemed to have the same force and effect as an original signature. Whenever this Agreement is executed in this manner, no changes, alterations, or modifications shall be accepted and both parties agree that the original version of this Agreement is the only version that is binding.

[END OF SECTION]

EXHIBIT D
MCGOUGH STANDARD INSURANCE REQUIREMENTS

**PLEASE SUBMIT YOUR CERTIFICATE OF INSURANCE ELECTRONICALLY TO
COI@MCGOUGH.COM**

****PLEASE INCLUDE JOB NUMBER AND JOB NAME WHICH CAN BE FOUND ON THE TOP OF THE COVER
LETTER****

D1. INSURANCE. Prior to commencing performance of the Services, hereunder, the Consultant shall procure, maintain and pay for insurance of the type and with the minimum coverage and limits of liability specified below, or if greater, any coverage or limits of liability specified in the Contract Documents for Consultants, or required by law, and in no event less than the limits actually obtained by Consultant.

D2. Consultant shall procure and maintain the following minimum insurance coverages and limits of liability:

Workers' Compensation	Statutory Limits
Employer's Liability	\$1,000,000 each accident \$1,000,000 disease policy limit \$1,000,000 disease each employee
Commercial General Liability	\$2,000,000 each occurrence \$2,000,000 aggregate
Automobile Liability	\$2,000,000 each accident
Professional Liability Insurance	\$2,000,000 per claim \$2,000,000 aggregate

D2.1 Commercial General Liability Insurance. Commercial General Liability insurance required under this Agreement shall be on ISO Form CG 00 01 or its equivalent and include coverage for liability arising from premises, operations, independent contractors, products-completed operations including construction defect, contractual liability, personal injury, and advertising injury. There shall be no limitations or exclusions of coverage beyond those contained in the standard coverage form. To the extent that Consultant's Commercial General Liability insurance is subject to aggregate limits, policies shall be endorsed so as to apply such aggregate limits separately to the Project.

D2.2 Commercial Automobile Liability Insurance. Commercial Automobile Liability insurance required under this Agreement shall be on ISO Form CA 00 01, or its equivalent and shall provide coverage for liability for bodily injury and property damage arising from the use or operation of any auto including those owned, hired, non-owned and otherwise operated or used by or on behalf of Consultant.

D2.3 Professional Liability Insurance. Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the commencement date of this Agreement, and coverage is continuously maintained during all periods in which Consultant performs Services, and for a period of five (5) years after Consultant completes its Services, or such longer period as the Contract Documents may require. If Consultant's scope of services

includes environmental, engineering or consulting, the terms of coverage shall contemplate such environmental professional services and shall not contain a pollution exclusion.

D2.4 Property and Equipment Insurance. Consultant’s property and equipment insurance required under this Agreement shall insure against loss or damage to all Consultant owned, leased, or borrowed tools, construction equipment, mobile equipment, protective fencing, property of Consultant employees and other similar property owned, leased, or borrowed by the Consultant. Consultant shall be responsible for any deductible or uninsured loss on this policy. Consultant shall require its consultants and sub-consultants to insure their owned or leased equipment in the same manner.

D3. Employer’s Liability, Commercial General Liability and Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.

D4. ADDITIONAL INSURED REQUIREMENTS. The Consultant shall endorse the Commercial General Liability, Commercial Automobile Liability, and Umbrella Liability policies to add the Contractor, its officers, directors, and employees, the Owner, and all other persons required in the Contract Documents, as additional insureds with respect to liability arising out of operations performed or completed for the Contractor and the Owner by the Consultant. The additional insured endorsements to Consultant’s Commercial General Liability policy shall be on ISO Form CG 20 10 07 04 (ongoing operations) and CG 20 37 07 04 (products-completed operations) or their equivalent. The additional insured endorsements to Consultant’s Automobile Liability insurance shall be on ISO Form CA-20-01, or its equivalent. The Umbrella Liability insurance shall follow form the treatment of the additional insured under the Commercial General Liability and Commercial Automobile Liability policies.

Additional insured coverage afforded by Consultant’s Commercial General Liability, Automobile Liability, and Umbrella Liability insurance shall be **primary and non-contributing** with respect to any insurance or self-insurance available to Contractor or Owner. Such primary and non-contributory insurance shall be subject to the terms of ISO Form CG 20 01 (Primary and Noncontributory – Other Insurance Condition) or its equivalent. Any other insurance or self-insurance maintained by Contractor or Owner shall be excess of, and non-contributory with, the coverage afforded by Consultant’s Commercial General Liability, Automobile Liability, and Umbrella Liability insurance, if any.

D5. DURATION OF INSURANCE. All insurance required pursuant to this Agreement shall be in force prior to the commencement date of this Agreement, shall be maintained for the duration of the Project, and Consultant agrees to continue to procure and maintain the products-completed operations liability insurance coverage for a minimum of five (5) years after the date the Services is substantially complete. All terms and conditions of coverage shall be maintained during this completed operations period, including the required coverage limits and the requirement to provide Contractor and Owner with coverage as an additional insured for completed operations.

D6. PROPERTY INSURANCE WAIVER OF SUBROGATION. To the extent of coverage afforded by builder’s risk or any other first party property or equipment floater insurance applicable to the Services or the Project or equipment used in the performance of the Services or Project, regardless of whether such insurance is owned by or for the benefit of the Consultant, the Contractor, the Owner or their respective Consultants and agents, the Contractor and the Consultant agree to waive all rights against (a) each other and any of their Consultants, sub-Consultants, agents and employees, each of the other, and (b) the Owner and Owner’s separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents or employees, whether under subrogation or otherwise, for loss or damage to

the extent covered by such first party insurance, except such rights as they may have to the proceeds of such insurance. The Contractor and Consultant shall require similar written waivers in favor of the individuals and entities identified above from their respective consultants and -sub-consultants. If policies of insurance referred to in this paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, then the owners of such policies will cause them to be so endorsed. A waiver of subrogation shall be effective as to a party even though that party would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the party had an insurable interest in the property damaged.

- D7. GENERAL WAIVER OF SUBROGATION.** Consultant agrees to waive all rights of subrogation against the Contractor and Owner, and shall cause each of its consultants to waive all rights of subrogation against the Contractor and Owner, their agents and employees, as respects loss, damage, claims, suits or demands, howsoever caused:
- D7.1** To real or personal property, vehicles, equipment, tools, etc. owned, leased or used by Consultant or Consultant's employees, agents, or sub-consultants; and
- D7.2** To the extent such loss, damage, claims, suits or demands are, or should be, afforded coverage by the Consultant's required or any other insurance (except professional liability to which this requirement does not apply) maintained by the Consultant. This waiver shall apply to all first party property, equipment, vehicle and workers' compensation claims (unless prohibited under applicable state statutes), and all third party liability claims. This waiver shall apply to all deductibles, retentions or self-insured layers applicable to the required or any other insurance (except professional liability to which this requirement does not apply) maintained by the Consultant. If necessary, Consultant agrees to endorse the required insurance policies to permit waivers of subrogation in favor of Contractor and Owner as required hereunder. Consultant further agrees to hold harmless and indemnify Contractor and Owner, for any loss or expense incurred as a result of Consultant's failure to obtain such waivers of subrogation from the insurers.
- D8. INSURANCE DEDUCTIBLE AND SELF-INSURED RETENTIONS LIABILITY.** The Consultant shall be solely responsible for funding deductibles and self-insured retentions maintained by Consultant, including any amounts applicable to deductibles or self-insured retentions applicable to claims involving the Contractor or Owner as an additional insured. Any self-insured retention in excess of \$50,000 must be declared and approved by Contractor.
- D9. PRIMARY/NON-CONTRIBUTING.** Consultant's required insurance coverage shall be primary insurance, and any insurance or self-insurance maintained by the Contractor or Owner shall be excess of and non-contributory with Consultant's insurance.
- D10. SEVERABILITY OF INTEREST.** Except with respect to the limits of insurance, Consultant's required insurance shall apply separately to each insured or additional insured.
- D11. RATING OF INSURANCE PROVIDER.** The Consultant shall maintain in effect all insurance coverage required under this Agreement, or by the other Contract Documents, at the Consultant's sole expense and with insurance companies acceptable to the Contractor, with a current A.M. Best Company Rating of not less than A- VII or better and authorized to transact business in the state where the Services will be performed by Consultant.
- D12. NOTICE OF CANCELLATION AND MODIFICATION.** All insurance policies shall contain a provision that coverage afforded thereunder shall not be cancelled, without thirty (30) days' prior written notice to the Contractor and to each additional insured to whom a certificate of insurance has been issued; provided,

however, that a ten (10) day prior notice requirement may apply in the event of cancellation due to nonpayment of premium. In addition, Consultant shall also provide to Contractor a copy of any notices of cancellation or modification of any insurance policies within ten (10) days of receipt.

- D13. VERIFICATION OF COVERAGE.** Certificates of insurance for all policies required by this Agreement (including copies of all additional insured endorsements) shall be filed with the Contractor prior to the start of the Services performed. Such Certificates of Insurance shall be in a form acceptable to the Contractor, shall specifically designate the name of the project for which the certificate is required, and shall provide satisfactory evidence that the Consultant has complied with all insurance requirements, including evidence that the Contractor, the Owner, and the other persons required by the Contract Documents have been added as additional insureds.

Certified copies of policies, including all policy endorsements, shall be furnished by Consultant within 15 days of written request by General Contractor.

The certificate(s) of insurance shall be subject to approval by Contractor, but failure of Contractor to request such certificate or other evidence of Consultant compliance with insurance requirements, or failure of General Contractor to identify deficiencies from evidence that is provided, shall in no way limit or relieve Consultant of its obligations to maintain such insurance.

- D14. NO REPRESENTATION OF COVERAGE ADEQUACY.** In specifying minimum Consultant insurance requirements, Contractor does not represent that such insurance is adequate to protect Consultant for loss, damage, or liability arising from its Work. Consultant is solely responsible to inform itself of types or amounts of insurance it may need beyond these requirements to protect itself.

The insurance requirements set forth in minimum amounts shall not be construed to relieve Consultant of liability in excess of such coverage, nor shall it preclude Contractor from taking such other actions as is available to it under any other provision of the Agreement. To the extent Consultant maintains insurance greater than these minimum requirements; Consultant agrees that such insurance shall be applicable to any of Consultant's liability obligations hereunder.

Any acceptance of certificates of insurance by Contractor shall in no way limit or relieve Consultant of its duties and responsibilities under this Agreement, including the duty to indemnify and hold harmless Contractor.

The Contractor does not represent that any builder's risk or property insurance applicable to the Services performed, if any, is adequate to protect the interests of the Consultant. It shall be the obligation of the Consultant to determine whether such insurance is in effect and provides adequate protection for its insurable interests, or whether the Consultant should purchase and maintain supplementary property insurance that it deems necessary to protect its interests in the Services performed.

- D15. FAILURE TO PROVIDE INSURANCE.** Failure of Consultant to maintain the required insurance shall constitute a default under this Agreement and, at Contractor's option, shall allow Contractor to terminate this Agreement for cause, withhold payment, and/or obtain such insurance and back charge all costs for such insurance to the Consultant.

[END OF SECTION]

EXHIBIT E
PROFESSIONAL SERVICES AGREEMENT
AIA DOCUMENT E201™ - 2007 DIGITAL DATA PROTOCOL

This Digital Data Protocol is incorporated into the accompanying agreement attached or the previously executed Master General Conditions Agreement (the "Agreement") between McGough Construction Co., LLC (the "Contractor") and Consultant for each specified Project.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS**
- 2 TRANSMISSION OF DIGITAL DATA**
- 3 PROJECT PROTOCOL TABLE**

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 This Exhibit establishes the terms and conditions the parties agree to follow with respect to the transmission or exchange of Digital Data for this Project.

§ 1.1.1 The parties agree to incorporate this Exhibit by reference into any other agreement for services or construction for the Project.

§ 1.1.2 Signatures may be made by electronic methods to the fullest extent permitted by applicable law.

§ 1.2 DEFINITIONS

§ 1.2.1 Digital Data. Digital Data is defined as information, communications, drawings, or designs created or stored for the Project in digital form.

§ 1.2.2 Confidential Information. Confidential Information is defined as Digital Data that the Contractor has designated as confidential and clearly marked with an indication such as "Confidential" or "Business Proprietary."

§ 1.2.3 Written or In Writing. In addition to any definition in the Agreement to which this Exhibit is attached, "written" or "in writing" shall mean any communication, including without limitation a notice, consent, or interpretation, prepared, and sent to an address provided in this Exhibit using a transmission method set forth in this Exhibit that permits the recipient to print or store the communication. Communications transmitted electronically are presumed received if sent in conformance with this Section 1.2.3.

ARTICLE 2 TRANSMISSION OF DIGITAL DATA

§ 2.1 The transmission of Digital Data constitutes a warranty by the Contractor to Consultant that the Contractor (1) is the copyright owner of the Digital Data, (2) has permission from the copyright owner to transmit the Digital Data for its use on the Project, or (3) is authorized to transmit Confidential Information.

§ 2.2 Consultant agrees to keep Confidential Information strictly confidential and not to disclose it to any other person except to (1) its employees, (2) those who need to know the content of the Confidential Information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of Confidential Information.

- § 2.3 The Contractor does not convey any right in the Digital Data or in the software used to generate the data. Consultant may not use the Digital Data unless permission to do so is provided in the Agreement, in other documents incorporated by reference into the Agreement, such as the general conditions of the contract for construction, or in a separate license.
- § 2.4 Unless otherwise granted in a separate license, Consultant’s use, modification, or further transmission of the Digital Data, as provided in the Agreement, is specifically limited to the design and construction of the Project, and nothing contained in this Exhibit conveys any other right to use the Digital Data for another purpose.
- § 2.5 To the fullest extent permitted by law, Consultant shall indemnify and defend the Contractor from and against all claims arising from or related to Consultant's use or transmission of said files, modifications to, or unlicensed use of, the Digital Data.
- § 2.6 In transmitting or using the Digital Data, Contractor makes no guarantee or representation as to the accuracy, suitability, sufficiency, or completeness of information provided, regardless of its data format, methods of transmission or permitted uses. The transfer of the Digital Data is not and shall not be deemed a sale. Contractor makes no warranties, either express or implied, including warranties of merchantability or fitness for any particular purpose.
- § 2.7 The Digital Data and the information contained therein are furnished by and accepted by Consultant “AS IS,” “WITH ALL FAULTS,” and without any warranty whatsoever. All other warranties of merchantability, fitness for any particular purpose, title and/or non-infringement are specifically excluded and disclaimed. Contractor does not warrant that the Digital Data or the information contained therein will meet Consultant’s requirements or that the operation of such files will be uninterrupted or error free. The entire risk as to the quality, suitability, completeness, performance, accuracy, and effort of the Digital Data and the information contained therein is with Consultant.
- § 2.8 Consultant acknowledges that the true and accurate record of the drawings for the Project is the most recent issued signed or sealed printed hard copy of the drawings and not the requested Digital Data. Differences may exist between the Digital Data and corresponding hard copy drawings. In the event that a conflict arises between hard copy drawings and the Digital Data, the hard copy drawings shall govern, and the undersigned assumes responsibility for determining whether a conflict exists.

ARTICLE 3 PROJECT PROTOCOL TABLE

- § 3.1 The table below illustrates the preferred flow of activity when transmitting or using Digital Data on the Project. The parties agree to comply with the data formats, transmission methods and permitted uses set forth in the Project Protocol Table below when transmitting or using Digital Data on the Project. In the event that a difficulty exists that prevents compliance with this table, then notification is required in writing by Consultant to Contractor.

Exhibit E – Professional Services Agreement
AIA Document E201-2007 - Digital Data Protocol

(Complete the Project Protocol Table by entering information in the spaces below. Adapt the table to the needs of the Project by adding, deleting, or modifying the listed Digital Data as necessary. Use Section 3.2 Project Protocol Table Definitions to define abbreviations placed, and to record notes indicated, in the Project Protocol Table.)

	Digital Data	Data Format	Transmitting Party	Transmission Method	Receiving Party	Permitted Uses	Notes
§3.1.1	Project Agreements and Modifications						
§3.1.2	Project Communications						
	General Communications						
	Meeting Notices						
	Agendas						
	Minutes						
	Requests for Information						
	Other:						
§3.1.3	Architect’s Pre-Construction Submittals						
	Schematic Design Documents						
	Design Development Documents						
	Construction Documents						
§3.1.4	Architect’s Drawings and Specifications						
	Contract Documents						
	Drawings						
	Specifications						
	Addenda						
	Other:						
§3.1.5	Contractor’s Submittals						
	Product Data						
	Submitted by Contractor						
	Returned by Architect						
	Shop Drawings						
	Submitted by Contractor						
	Returned by Architect						
	Other Submittals:						
§3.1.6	Consultant’s Submittals						
	Product Data						
	Submitted by Consultant						
	Returned by Contractor						
	Shop Drawings						
	Submitted by Consultant						
	Returned by Contractor						
	Other Submittals:						
	3D Model						
	Submitted by Sub/Fabricator	N,C,D,I	S,F	EX	C	C,I	
	Other Submittals						
	MEP Issues Log	P	C,S	EMA	A	V	
§3.1.7	Modifications						
	Architect’s Supplemental Instructions						
	Requests for Proposal						
	Proposal						
	Modification Communications						
§3.1.8	Project Payment Documents						
§3.1.9	Notices and Claims						
	Other:						
§3.1.10	Closeout Documents						
	Record Documents						
	3D As-Builts	N,R,C	S	EX, CD, FD	C	O	

§ 3.2 PROJECT PROTOCOL TABLE DEFINITIONS

(Below are suggested abbreviations and definitions. Delete, modify, or add as necessary.)

Data Format:

O	Microsoft Outlook	C	any one or more file format supported by Navisworks <i>(see Note 1)</i>
W	.doc, Microsoft® Word	D	.dwg, Autodesk AutoCAD <i>(Export to AutoCAD – no proxy graphics, no enablers needed)</i>
E	.xls, Microsoft® Excel	R	.rvt, Autodesk Revit
P	.pdf, Adobe Acrobat Standard	I	.ifc, Information File Classes format
N	.new, Autodesk Navisworks (working file)	H	.html Autodesk Constructware
F	.nwf, Autodesk Navisworks (coordination file)		

Transmitting Party:

O	Owner	S	Consultant
A	Architect	F	Fabricator
C	Contractor		

Transmission Method:

EM	Via e-mail	EX	Posted to McGough Extranet – File Transfer <i>(Box)</i>
EMA	As an attachment to an e-mail transmission	FTP	FTP transfer to receiving FTP server <i>(Architects, SharePoint, etc.)</i>
CD	Delivered via Compact Disk	FD	Flash drive
PS	Posted to Project Web site		

Receiving Party:

O	Owner	S	Consultant
A	Architects	F	Fabricator
C	Contractor		

Permitted Uses:

(Receiving Party's permitted use(s) of Digital Data)

S	Store and view only	V	Review and Advise
R	Reproduce and distribute	A	Approval
I	Integrate <i>(incorporate additional digital data without modifying data received)</i>	C	Trade Coordination
M	Modify as required to fulfill obligations for the Project	O	Owner Turnover

Notes:

(List by number shown on table.)

1. File types supported by Navisworks 2011

.nwd	.nwf	.nwc	.ipt
.iam.	lpj	dwg,	.dxf
.man	.cv7	.dgn	.prp
.prw	.jt	.3ds	.prj
.dri	.sat	.sab	.x_b
.stp	.rvm	.dwf	.skp
.fbx	.stp	.step	.ifc
.stl	.igs	.iges	.wrl
.wr			

[END OF DOCUMENT]