



SUBCONTRACT AGREEMENT

THIS SUBCONTRACT AGREEMENT (the "Agreement") IS MADE ON THIS **13th DAY of June, 2023** BETWEEN

THE CONTRACTOR: **DANIELS & DANIELS CONSTRUCTION COMPANY, INC.** AND
North Carolina General Contractors License # 23697
P.O. Box 10337, Goldsboro, NC, 27532
Phone 919-778-4525
Fax 919-778-6850

THE SUBCONTRACTOR: **Sample Test**
70 North William Street
Goldsboro, NC 27530

FEDERAL TAX ID NUMBER

POINT OF CONTACT:
OFFICE NUMBER:
FAX NUMBER:
CELL NUMBER:
E-MAIL ADDRESS:

ARTICLE 1. THE PROJECT

The services to be provided under this Agreement are for the following Project:

THE PROJECT:

- OWNER:**
- CONTRACTOR JOB NUMBER:**
- CONSTRUCTION NOTICE TO PROCEED:**
- COMMITMENT NUMBER:**
- JOB NAME:**
- LOCATION:**

LIEN AGENT / PROJECT STATEMENT INFORMATION:

USI Insurance Services
Attention: Scott Mathers
8540 Colonnade Centre Drive Suite 111
Raleigh NC 27615

ARTICLE 2. THE SUBCONTRACT SUM

The Contractor shall pay the Subcontractor for the performance of this Agreement **One Hundred Seventy-Five Thousand Seven Hundred Eighty Dollars and Zero Cents (\$175,780.00)** in partial payments as hereinafter described. The Subcontract Sum includes all Federal, State, County, Municipal and other taxes imposed by law and based upon labor, services, materials, equipment or other items acquired, performed, furnished or used for and in connection with the Work, including but not limited to sales, use and personal property taxes payable by or levied or assessed against the Owner, the Contractor or the Subcontractor. Where the law requires any such taxes to be stated and charged separately, the total price of all items included in the Work plus the amount of such taxes shall not exceed the Subcontract Sum. This is a lump sum

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Subcontract, unless the unit-price option is selected below. In the event the unit-price box is checked then the unit-price provision applies, but only to those lien items that are specifically set forth in the unit-price section.

UNIT PRICES: For the following items, Subcontract will be compensated, in addition to the lump sum amount stated above, for actual quantities of work performed at the rates set forth as follows:

Item 1: ACT Replacement \$10.00 for per square foot.

ARTICLE 3. BONDS & JOINT CHECK AGREEMENTS

The Subcontractor shall notify the Contractor in writing of any joint check request in advance of the Subcontractor submitting its first application for payment. The Contractor shall have sole discretion to approve or disapprove of any proposed joint check arrangement, and the Contractor shall have the right, at its discretion, to initiate and require joint check payments under this Subcontract Agreement, if the Contractor believes it is appropriate. Any joint check arrangement agreed to by the Contractor is deemed solely for the benefit of the Contractor and not the Subcontractor or its subcontractors. Any payments made under a joint check arrangement are deemed to be payments made to and/or on behalf of Subcontractor and entitle the Contractor to a pro rata reduction in the amounts otherwise owed to Subcontractor. **If the Contractor elects to have a Subcontractor provide a bond, the Subcontract Sum includes the price of Zero Dollars (\$0.00) to cover the Subcontractor's cost for the bond. No Bond Required.**

ARTICLE 4. CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, and any Exhibits attached hereto, the Agreement between the Owner and the Contractor (the "Prime Contract"), the Conditions of the Contract between the Owner and the Contractor (General, Supplementary and other Conditions), Drawings, Specifications, all Addenda issued prior to execution of the Agreement between the Owner and the Contractor, and all Modifications issued subsequent thereto. The Contract Documents are part of this Agreement, and the Subcontractor is bound by the terms of all Contract Documents. This Agreement shall control any inconsistency in the Contract Documents. Notwithstanding the foregoing, in the event of any conflicts in the provisions of the Contract Documents, the provision imposing the greater duty on the Subcontractor shall govern.

LIST OF CONTRACT DOCUMENTS:

1. Specifications dated April 14, 2023
2. Plans dated April 14, 2023
3. Addendum No. 1 dated May 4, 2023
4. Addendum No. 2 dated May 11, 2023
5. Includes Base Bid Alternates 1 & 2

LIST OF CONTRACT EXHIBITS:

1. Exhibit A – Contact List
2. Exhibit B – Procedure Manual
3. Exhibit C – Contractor Safety Worksheet
4. Exhibit D – Bid Form

The Contract Documents are available for examination by the Subcontractor at all reasonable times during the Contractor's business hours at the office of the Contractor. The Subcontractor represents and agrees that it has (i) carefully examined and understands the Contract Documents relevant to The Subcontractor's Scope of Work; (ii) adequately investigated the nature and conditions of the Project site and locality; (iii) familiarized itself with conditions affecting the difficulty of the Subcontractor's Scope of Work; and (iv) entered into this Agreement based on its own examination, investigation and evaluation and not in reliance upon any opinions or representation of the Contractor.

The Contract Documents are to be treated by the Subcontractor as "scope" documents which indicate the general Scope of Work in terms of the architectural design concept, the overall dimensions, the type of structural, mechanical, electrical, utility, and other systems, and an outline of major architectural elements. As "scope" documents, the Contract Documents do not necessarily indicate or describe all items required for the full performance and proper completion of the Subcontractor's Scope of Work. Subsequently issued documents may more completely detail certain requirements of the Subcontractor's Scope of

Work. It is the intent of this Agreement that the Subcontractor is to furnish all items required for proper completion of the Subcontractor's Scope of Work. Subsequently issued documents may more completely detail certain requirements of the Subcontractor's Scope of Work, at the option of the Contractor or the Architect, for the purpose of further defining the Subcontractor's Scope of Work, but there is no obligation to issue such additional documents.

ARTICLE 5. SCOPE OF WORK

The Subcontractor warrants that it is thoroughly familiar with the site conditions and the Contract Documents (as set forth in Article 4) and that the Subcontractor shall furnish anything necessary to complete the work (the "Work") as set forth below and in the Contract Documents. The Contract Documents shall consist of all drawings, specifications, and addenda; as stipulated in Exhibit A of this agreement. The Subcontractor's Scope of Work under this Agreement shall be generally defined, without limitation, as all work within the **Storefront, Curtainwall and Glazing** trade or related to **Storefront, Curtainwall and Glazing** which includes all requirements shown or required in the Contract Documents applicable to the Project that in any way relate to such trade, including, but not limited to:

5A. SUBCONTRACTOR SCOPE INCLUDES (BUT IS NOT LIMITED TO):

1. Provide supervision, labor, material, and equipment for the **Storefront, Curtainwall and Glazing Work** as shown, scheduled and/or specified.
 - i. Sections That Apply to Work:
 - ii. Glazed aluminum curtainwall, storefronts, and glazing.
 - iii. Flashings and trim.
 - iv. Brake metal around windows.
 - v. Work related caulking.
 - vi. Daily and final clean.
 - vii. Work per plans and specifications.
 - viii. Adhere to all OSHA and Daniels & Daniels Safety Standards.

Specifications Sections:

Division 01-General Requirements

Division 07- Thermal & Moisture Protection

Division 08- Doors and Windows

Drawings Sheets:

All drawings, as they pertain to the scope of the Subcontract Agreement

2. It is the intent of this scope that Work performed pursuant to this scope be complete and accepted in every respect. The description of this Work included above and below are clarifications of specific items and are not intended to limit the overall scope of the Work required or reasonably inferred for the complete systems per the contract documents.
3. Utilization of specified manufacturers, suppliers and products.
4. Comply with all general, sheet, and other drawing notes throughout the Contract Drawings associated with your Work.
5. Provide all features and components of your equipment and devices as indicated for a complete and operational system.
6. Provide and install identification of your material and equipment including labels, warning signs, tags, stencils, banding, etc...as required for your Work.
7. *If required by the specifications related to your work*, perform all cleaning, flushing, sterilizing, chemical treating and disinfecting, etc..
8. Remove labels, stickers, protective coatings, and clean all items installed under this contract at time of installation to a like new condition.
9. State sales tax, use tax and all other jurisdictional taxes.
10. Off-site storage of materials, freight charges and protection of materials during shipping.
11. Unless specifically and expressly excepted, furnishing all labor, supervision, services, inspections, materials, permits, equipment, tools, scaffolds, hoisting, transportation, shipping, loading, unloading, and all other things necessary to furnish, install, and complete the Subcontractor's Scope of Work described herein, or which can be reasonably inferred from the general scope of this Agreement or the Contract Documents

5B. GENERAL REQUIREMENT INCLUDES (BUT IS NOT LIMITED TO):

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1. Compliance with all procedures as indicated in the attached procedures manual, safety plan and quality control plan.
2. Attend project meetings and coordinate with the Contractor and other project subcontractors.
3. All personnel who enter the construction site must wear Personal Protective Equipment (PPE) to include hard hats, safety glasses, high-visibility shirt or vest and safety-toed shoes or boots and comply with all Governmental Safety Requirements, as applicable.
4. The Subcontractor is required to utilize the US Citizenship and Immigration Services E-Verify System to verify their employees' eligibility to legally work in the United States. Provide documentation to the Contractor upon request.
5. Participate and comply with the Environmental Controls, Recycled/Recovered Materials and Construction and Demolition Waste Management plans and requirements including salvaging, recycling, separating of materials, disposing of waste, etc.... as it pertains to your Scope of Work and providing written reports as required.
6. Attend all preparatory meetings as required for each defined feature of Work. Appropriate activity hazard analysis forms shall be completed and submitted to the Contractor at least one (1) week prior to the preparatory meeting.
7. Layout and engineering from control lines and benchmarks established by others.
8. All Work must comply with the Contract Documents and applicable codes.
9. Protection of site elements, existing work and finishes during your installations.
10. Rigging, craning and hoisting of materials and equipment.
11. Comply with the Fire Prevention Precautions for hot work including notifications, daily hot work permits, fire watch and portable fire extinguishers.
12. Provide barricades, warning signs, fall protection, task lighting, lifts, scaffolding or other additional means to perform your Work.
13. Provide flagmen and traffic control as necessary for the Subcontractor's Work only.
14. The Subcontractor shall at all times keep its Work area in an orderly and broom-cleaned condition and shall be responsible for the daily clean-up and removal of trash and debris which results from your Work. Transport and place General Construction debris only in a Contractor provided dumpster at the end of each work day and/or shift. Any waste and debris aside from General Construction debris shall be disposed of and removed from the site by the Subcontractor.
15. The Subcontractor shall provide adequate labor onsite for unloading of all deliveries scheduled by the Subcontractor.
16. Provide access and coordinate inspection and testing services as outlined for your scope of Work including coordination with the Contractor and the Owner. Any Work found to be non-compliant or defective shall be corrected, and retested by the Subcontractor. The Subcontractor shall be responsible for any costs associated with any re-inspections required as a result of deficient Work by the Subcontractor.
17. Performance requirements, certificates and test reports as specified or required in your Specification Sections.
18. Provide all attic stock, spare parts and tools as required by your Specification Sections and Division 1.
19. Provide all quality control, acceptance testing of critical systems, product requirements, closeout submittals, operation & maintenance data, testing, adjusting, balancing, commissioning and as-built documents as required by your Specification Sections and Division 1.
20. Provide all warranties, demonstration, training and manufacturers certificates as indicated and required by specs for all your products incorporated into the Work.
21. Inspection and verification of existing conditions and substrates required to receive the Subcontractor's Work. Failure to provide adequate notification of defective or nonconforming existing conditions prior to installation shall not relieve the Subcontractor of schedule adherence requirements including removal of unacceptable Work.
22. At no additional cost to the Contractor or the Owner, the Subcontractor shall comply with all of the terms and conditions contained in the Contractor's Construction Waste Management Plan and Construction Indoor Air Quality Plan.
23. If required by the Prime Contract, the Subcontractor shall obtain and provide documentation of background checks satisfactory to the Contractor with respect to all of the Subcontractor's employees, agents, and employees of any of the Subcontractor's subcontractors of any tier who perform any of the Work. In the event that the Subcontractor fails to provide to the Contractor satisfactory documentation of such background checks, the Contractor shall have the option, but not an obligation, to have such background checks performed and to back charge the Subcontractor for the cost of such background checks.
24. In the event that the Contract Documents require the Contractor's subcontractors to participate in the federal E-Verify system, or if the Contractor requests the Subcontractor to participate in such E-Verify system, the Subcontractor shall screen all of its employees and all employees of its subcontractors with the federal E-Verify system. The Subcontractor's failure to properly use the federal E-Verify system shall be a material breach of this Agreement and Subcontractor shall defend, indemnify and hold harmless the Contractor from and against any and all claims, damages, losses, penalties, fines, costs and expenses, including attorneys' fees, arising out of or resulting from the Subcontractor's failure to properly use the federal E-Verify system.

5C. Exclusions:

None

ARTICLE 6. FLOW-DOWN RELATIONSHIP

The Subcontractor shall not deal directly with or work directly for the Owner on this project or at this facility. The Subcontractor is bound to the Contractor in the same way the Contractor is bound to the Owner and shall assume toward the Contractor all the obligations and responsibilities which the Contractor assumes towards the Owner pursuant to the Prime Contract, except that this Agreement shall govern any inconsistent provision of the Prime Contract.

ARTICLE 7. PARTIAL PAYMENTS

The Subcontractor shall itemize the Subcontract price as a basis for establishing value of Work completed and partial payments. This "Schedule of Values" SOV shall be broken down in sufficient detail to clearly identify, quantify and value work delivered and in place. At a minimum the SOV will include: separate value for labor and materials, be broken down into definable features of work and include a line item for closeout documentation. No partial payment shall be made until the SOV has been received, reviewed and accepted by the Contractor. Failure to submit a SOV or obtain approval shall result in no payment until the scope of work has been completed and accepted by the Owner. The Subcontractor shall submit monthly partial payment requests, based upon the approved SOV. The monthly billing shall be prepared in the same manner as required by the general conditions and specifications of the general contract. The payment shall be deemed due to the Subcontractor 30 days after approval by the owner or 10 days after receipt of payment from the owner to the Contractor, whichever is sooner. Five percent (5%) retention shall be withheld until final payment is due except that retainage will be reduced when and to the extent the Owner's retainage withheld from the Contractor is reduced. Final payment shall be due after completion of all Work, acceptance by the Owner, compliance with all Subcontract obligations, and receipt of final payment from the Owner, which items shall be conditions precedent to the making of final payment to the Subcontractor. The Contractor is entitled to proof of payment for labor, material and services used before any payment is due. Materials paid for shall belong to the Contractor, but shall remain in the care, custody and control of the Subcontractor and be stored at the Subcontractor's risk. The Subcontractor shall be responsible at all times for his labor and/or materials until same is accepted by the Owner. The Subcontractor shall furnish warranties and all other documents required by the Prime Contract for the Subcontractor's Work, including releases of all claims and liens as a condition precedent for final payment. Partial releases and lien waivers, in a form acceptable to the Contractor, may be required at the Contractor's option as a condition precedent to any partial payments for Work completed and the Contractor may require the Subcontractor to certify and/or exhibit such other evidence that all entities furnishing labor, materials, and equipment under prior requisitions have been paid in full. If the Contractor withholds making payment to the Subcontractor until the Subcontractor has complied with the aforesaid terms and conditions, the Subcontractor shall still diligently proceed with the Work as required.

ARTICLE 8. INSURANCE & INDEMNITY

The Subcontractor and all tiers of sub-subcontractors shall procure, at their sole cost and expense, the insurance coverages set forth below, and shall maintain such coverages in full force and effect as specified in this Article. The Subcontractor and all sub-subcontractors shall include the Contractor and the Owner, as additional insureds to the insurance policies described below. The insurance coverage afforded under the policies described herein shall be primary and non-contributing with respect to any insurance carried independently by the Contractor. All such insurance policies shall indicate that with respect to the insureds (whether named or otherwise), cross liability and severability of interests shall exist for all coverages provided thereunder. In addition, all such insurance policies shall include a waiver of subrogation endorsement in favor of the additional insureds. The insurance specified below shall be placed with insurance companies reasonably acceptable to the Contractor, shall be written on an occurrence basis, and shall incorporate a provision requiring the giving of notice to the Contractor at least thirty (30) days prior to the cancellation, non-renewal or material modification of any such policies. The Subcontractor shall promptly furnish the Contractor with certificates of insurance evidencing the insurance required hereunder, and shall not commence any services under this Agreement until such insurance is obtained and such certificates of insurance have been delivered to the Contractor.

- (i) Commercial General Liability Insurance. A Commercial General Liability Insurance Policy in form and substance reasonably acceptable to the Contractor and including, without limitation, appropriate endorsements adding the following coverages: Premises and Operations Liability; Explosion, Collapse and Underground Damage Liability;

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Personal Injury Liability (with employee and contractual exclusions deleted); Broad Form Property Damage Liability; Contractual Liability supporting the Contractor's indemnification agreements in this Agreement; Completed Operations and Products Liability for a period of not less than three (3) years following the Owner's acceptance of the Project; and Independent Contractor's Protective Liability. The Commercial General Liability Insurance Policy must be written with a combined single limit of liability of not less than \$1,000,000 for each occurrence of bodily injury and property damage and an annual aggregate of liability per project of not less than \$3,000,000 for bodily injury and property damage, and an annual aggregate of liability of not less than \$3,000,000 for Completed Operations and Products Liability.

- (ii) Comprehensive Automobile Liability Insurance. A Comprehensive Automobile Insurance Policy in form and substance reasonably acceptable to the Contractor. The Comprehensive Automobile Liability Insurance Policy must provide coverage for all owned, hired, rented and non-owned automobiles, and must be written with a combined single limit of liability of not less than \$1,000,000 for each occurrence of bodily injury and/or property damage.
- (iii) Worker's Compensation Insurance. A Worker's Compensation Insurance Policy in form and substance reasonably acceptable to the Contractor and in an amount not less than the statutory limits (as may be amended from time to time), including Employees Liability Insurance with limits of liability of not less than (i) \$500,000 for bodily injury by accident, each accident, (ii) \$500,000 for bodily injury by disease, each employee, and (iii) \$500,000 aggregate liability for disease.
- (iv) Property Insurance. A Property Insurance Policy covering all materials, equipment and other portions of the Work stored off-site or in transit; it being expressly acknowledged and agreed by the Subcontractor that it shall assume responsibility for any loss or damage to such property.
- (v) Umbrella Liability Insurance. An Umbrella Liability Insurance Policy in form and substance reasonably acceptable to the Contractor written in excess of the coverages provided by the insurance policies described above in subsections (i), (ii) and the Employer's Liability in (iii). The Umbrella Liability Insurance Policy must be written with a combined single limit not less than \$1,000,000 for each occurrence of bodily injury and/or property damage, and an annual aggregate of liability of not less than \$1,000,000 for bodily injury and/or property damage.

The Contractor shall not insure nor be responsible for any loss or damage to tools, equipment or other property of any kind owned, rented or leased by the Subcontractor, sub-subcontractors, or their respective employees or agents.

To the fullest extent allowed by law, the Subcontractor shall defend the Contractor, the Owner, and their respective officers, directors, shareholders, agents, members, managers and employees (collectively, the "Indemnitees") against any claim of any kind or nature made against any of the Indemnitees as a direct or indirect result of willful misconduct, or the Subcontractor's operations or Work, or performance or lack of performance of the Subcontractor's obligations under this Agreement, by the Subcontractor or anyone directly or indirectly employed by the Subcontractor, or anyone for whose acts the Subcontractor may be liable. In addition, to the fullest extent permitted by law, the Subcontractor shall indemnify the Indemnitees for and hold them harmless from any damage, injury, loss, liability or expense (including, but not limited to, attorney and expert witness fees and other costs of litigation) incurred by any of the Indemnitees as a direct or indirect result of willful misconduct, or the Subcontractor's operations or Work, or performance or lack of performance of the Subcontractor's obligations under this Agreement, by the Subcontractor or anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable. However, the Subcontractor shall not be obligated to indemnify any Indemnitee for or hold any Indemnitee harmless from any portion of the damage, injury, loss, liability or expense incurred by the Indemnitee to the extent that such damage, injury, loss, liability or expense results from the negligence or willful misconduct of such Indemnitee. Payment to the Subcontractor by the Contractor of any sums purportedly due under this Agreement shall not be a condition precedent to the Contractor's right to enforce the Subcontractor's obligations under this Article 7. The Subcontractor's obligations under this Article 7 shall survive the expiration and termination of this Agreement and shall continue until such time as all actions against any of the Indemnitees covered by the Subcontractor's obligations under this Article 7 are barred by applicable statutes of limitations. The Subcontractor's obligation hereunder to defend the Indemnitees is entirely separate from and independent of the Subcontractor's obligation hereunder to indemnify and hold harmless the Indemnitees and applies whether the Subcontractor's liability has been determined and whether the Indemnitees have incurred any damage, injury, loss, liability or expense. The Subcontractor agrees that during any stage of any claim, mediation, arbitration or lawsuit relating directly or indirectly to this Agreement, the Contractor shall be entitled to summary adjudication of the Subcontractor's obligation hereunder to defend the Indemnitees. The Subcontractor further agrees that the Subcontractor shall reimburse the Contractor for the Contractor's reasonable attorney fees and other litigation expenses incurred in enforcing the Subcontractor's obligations hereunder to defend, indemnify and/or hold harmless the Indemnitees. The parties hereto are aware of and acknowledge the application of North Carolina General Statute § 22B-1. All indemnity provisions in this Agreement shall be interpreted to comport with that statute and no indemnity obligation herein is intended to extend beyond the limits of permissible indemnities under that statute. In no event shall the Subcontractor's obligations

hereunder be limited to the extent of any insurance available to or provided by the Subcontractor.

ARTICLE 9. SHOP DRAWINGS, SAMPLES AND DATA SUBMISSIONS

All submittals such as shop drawings, catalogs, samples and material lists required by the Prime Contract, which pertain to this Work, shall be furnished in a complete and timely manner. The Subcontractor shall be responsible for delays because of failure to do so and for any deviation from plans and specifications. All deviations from the Prime Contract documents must be noted clearly on the submittals, and by separate cover letter the Subcontractor shall state reasons for the deviation and refer to the applicable contract provision. The complete set of submissions for the Work shall be submitted by the Subcontractor to the Contractor within twenty-one (21) days from the date of this Agreement, unless otherwise stated in the Contractor's Schedule of Progress. Approval by the Owner or the Contractor does not constitute a waiver or modification of the Prime Contract requirements.

ARTICLE 10. TIME IS OF THE ESSENCE

Time is of the essence of this Agreement. The Subcontractor is responsible for the means and methods of how their scope of work is to be completed, however the Contractor has the right to direct the manner in which the Subcontractor performs its Work. The Subcontractor shall proceed with the performance of the Work at such time and in such sequence as the Contractor may direct and/or as required by the Schedule of Progress, which may be updated and revised from time to time by the Contractor as working conditions require, including overtime or shift work performance as necessary. If overtime or additional shifts are required solely to accelerate project completion through no fault of the Subcontractor, it shall be authorized in writing prior to such acceleration effort and be paid for by the Contractor. Payments due may be withheld to insure timely progress and completion of Work. The Subcontractor shall be liable for all losses and damages incurred by the Contractor (including consequential damages) due to inexcusable delays of the Subcontractor in the performance of the Work, including delay costs not reimbursable from the Owner due to concurrent, inexcusable delays of the Subcontractor.

ARTICLE 11. EXTENSIONS OF TIME

The Subcontractor shall be entitled to an extension of time for performing and completing the Work covered by this Agreement upon the same terms and conditions an extension of time is allowable under the Prime Contract, and only to the extent that an extension of time is actually granted to the Contractor by the Owner, or its representative under the Prime Contract. The Subcontractor shall give notice of the excusable delay to the Contractor in writing within three (3) calendar days from the beginning of said delay in order that the Contractor may in turn notify the Owner. If notice is not given timely, said excusable delay shall be considered waived. The Owner's decision, or its representative's, with regard to the delay, including the assessment of liquidated damages, shall be binding upon and chargeable to the Subcontractor, subject to the disputes procedure provided in the Prime Contract.

ARTICLE 12. DAMAGES FOR DELAY

The Contractor shall not be independently liable to the Subcontractor for any unforeseeable delay or interference occurring beyond the Contractor's control or for delay or interference caused by the Owner or other subcontractors or suppliers. The Subcontractor shall only be entitled to reimbursement for any damages for delays recovered on its behalf by the Contractor from the Owner or others. The Subcontractor shall have the right, at its expense, to exercise all provisions of the Prime Contract to recover said damages against the Owner. In the event that the Contractor seeks to recover damage for delay against the Owner or others and the Subcontractor participates in such claim, the Subcontractor shall be responsible for its pro rata share of any legal, expert or other expenses in presenting and/or prosecuting the overall claims. The Contractor shall have the right, at any time and for any reason, to delay or suspend the whole or any part of the Work herein. A time extension shall be the sole and exclusive remedy of the Subcontractor for delays or suspensions caused by the Contractor, even if the delays or suspensions were: (1) of a kind not contemplated by the parties, (2) amounted to an abandonment of the contract, or (3) were caused by active interference.

ARTICLE 13. SCHEDULE

The Contractor may schedule this Project using CPM Schedule techniques and/or simple bar charts. The Subcontractor agrees to meet with the Contractor and to provide the necessary detailed information to properly depict activities, including their costs and duration, at no additional cost to the Contractor. All such data shall be provided within fifteen (15) days of the contract date. The Contractor may at its option withhold making payments or submit a schedule to the Subcontractor if this information is not provided by the time stated above. The Contractor may modify and change the schedule from time to time as it deems appropriate in accordance with actual performance conditions. The Subcontractor shall perform the Work

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as directed by such schedules as expeditiously as possible despite any pending disputes. The schedule will include sufficient detail to identify all definable features of work and include a line item for all close-out documentation.

ARTICLE 14. DEFAULT TERMINATION

The following events shall be deemed a breach of this Agreement by the Subcontractor: failure to expeditiously prosecute and complete the whole or any part of the Work in accordance with the current Schedule of Progress and/or directions from the Contractor; failure to pay for labor and material, payroll taxes, contributions or insurance premiums; interference with the performance of work by others for any reason; an act of bankruptcy or insolvency; or any other material failure to fulfill obligations of this Agreement or of the Prime Contract concerning the Subcontractor's Work or responsibilities. If the Subcontractor breaches this Agreement or is otherwise in default of its obligations under this Agreement, the Contractor shall have the right, after three (3) days written notice to the Subcontractor, in addition to any other rights and remedies provided by this Agreement, the other Contract Documents or by law: (a) to perform and furnish through itself or through others any such labor or materials for the Work and to deduct the cost thereof from any monies due or to become due to the Subcontractor under this Agreement or any other agreements between the Contractor and the Subcontractor, and/or (b) to terminate the employment of the Subcontractor for all or any portion of the Work, enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, all of which the Subcontractor hereby transfers, assigns and sets over to the Contractor for such purpose, and to employ any person or persons to complete the Work and provide all the labor, services, materials, equipment and other items required therefore. In the event that the Contractor believes in good faith that the Work is being endangered by the Subcontractor's failure to prosecute the Work or take action, such written notice may be omitted and the Contractor may immediately take the actions set forth in this Article.

In case of termination of this Agreement by the Contractor, the Subcontractor shall not be entitled to receive any further payment under this Agreement until the Work is completed to the satisfaction of the Contractor and the Owner. If the unpaid balance of the amount to be paid under this Agreement exceeds the cost and expense incurred by the Contractor in completing the Work, such excess shall be paid by the Contractor to the Subcontractor; but if the cost and expense to complete the Work exceeds the unpaid balance, then the Subcontractor and its surety shall pay the difference to the Contractor. Such cost and expense shall include: i) the cost of performing and furnishing all labor, services, materials, equipment and other items required to complete the Work to the satisfaction of the Contractor and the Owner, ii) all losses, damages, costs and expenses (including legal fees and disbursements incurred in connection with procurement, in defending claims arising from such default and in seeking recovery of all such cost and expense from the Subcontractor and/or its surety), and iii) all liquidated damages and other disbursements sustained, incurred or suffered by reason of or resulting from the Subcontractor's default. The Contractor does not waive any other rights or remedies available to the Contractor, including right of setoff and collection of any funds which may be due the Subcontractor under other subcontracts with the Contractor. If the Contractor wrongfully exercises its default option under this Article, the Subcontractor's remedy shall be solely and exclusively under Article 15, Termination for Convenience.

The Subcontractor agrees that in the event the Contractor is terminated for default by the Owner, all disputes relating to or arising out of this Agreement shall be stayed pending the final resolution of the Contractor's termination for default in accordance with the administrative and/or judicial disputes procedures in the Prime Contract. The Subcontractor further agrees that all payment bond actions by the Subcontractor against the Contractor shall be stayed pending the final resolution of the Contractor's termination for default. In the event that the Owner's termination for default of the Contractor is upheld, the Subcontractor agrees that the amount of any recovery the Subcontractor is entitled to from the Contractor shall be limited to the recovery allowed pursuant to Article 15, Termination for Convenience.

ARTICLE 15. TERMINATION FOR CONVENIENCE

The Contractor shall have the right to terminate this Agreement for its own convenience for any reason by giving notice of termination effective upon receipt thereof by the Subcontractor. Termination for default under Article 14, if wrongfully made, shall be treated as a termination for convenience. Settlement with the Subcontractor shall be accomplished in accordance with the provisions of the Termination for Convenience clause in the Prime Contract. If the Termination for Convenience clause in the Prime Contract is not applicable, the Subcontractor shall only be paid either the actual cost for Work and labor in place, plus ten percent (10%), or a pro rata percentage of the Subcontract amount equal to the percentage of completion for the Subcontractor's Work as approved by the Contractor, whichever is less. The Subcontractor shall not be entitled to anticipated profits on unperformed portions of the Work.

ARTICLE 16. SUBCONTRACTOR INSPECTION AND QUALITY CONTROL

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The Subcontractor shall inspect all materials, supplies and equipment, which are to be incorporated in the Work in accordance with the Subcontractor's established procedures. In addition, the Subcontractor shall conduct a continuous program of construction quality control for all Work performed on the job site. The Subcontractor will provide to the Contractor a "Daily Report" which will contain the following information; personnel on site, equipment on site, materials delivered to the site, work performed that day, and work scheduled to be performed the next day. The Contractor shall have the right at all reasonable times to inspect the Work and all materials, supplies and equipment for the Work at the job site and at the Subcontractor's and its suppliers' shops for conformance with this Agreement or for measuring progress of the Work. For the Contractor inspection at the job site, it is the Subcontractor's responsibility to notify the Contractor of readiness for inspection at least five (5) working days prior to such assembly or enclosure as would render the material, equipment or Work inaccessible for inspection, and at such other times as the Contractor may require. The Contractor's failure to inspect materials, equipment or the Work or to object to defects therein at the time the Contractor inspects the same shall not relieve the Subcontractor or any of its suppliers of their responsibilities for defective material, equipment or Work, nor be deemed to be a waiver of the Contractor's rights to subsequently reject defective Work. Rejection by the Contractor of any or all parts of defective Work for failure to conform with the Subcontractor shall be final and binding. Such rejected Work shall promptly be corrected or replaced by the Subcontractor at the Subcontractor's expense. If the Subcontractor fails to commence and diligently continue correction or replacement of such rejected Work within forty-eight (48) hours, after receipt of written notice from the Contractor to correct or replace the rejected Work, the Contractor may at its option remove and replace the rejected Work and the Subcontractor shall promptly reimburse the Contractor for the costs of such removal and replacement of defective Work.

ARTICLE 17. CONTRACTOR CHANGES

The Contractor may at any time direct the Subcontractor to increase or decrease the Work, under this Agreement. Only changes to Work authorized by the Contractor as an extra or change, in writing, shall be paid for by the Contractor. If the change direction does not originate from the Owner's direction and there is no prior agreement on price, then the Subcontractor shall be paid for the actual direct costs of said Work plus ten percent (10%) for all overhead, profit, supervision, small tools, insurance and bonds which will constitute the entire amount due the Subcontractor for the extra Work, including any impact or delay effect.

ARTICLE 18. OWNER CHANGES

Changes ordered by the Owner shall be performed and paid for in accordance with the terms of the Prime Contract, including all rights of dispute and appeal, provided reservation and exercise of said rights do not interfere with the progress of the Work. Payment for the Owner changes shall be made in accordance with Article 6, and payment for the Owner changes shall not be due the Subcontractor, as a specific condition precedent, until said payment is received by the Contractor from the Owner.

ARTICLE 19. CONTRACT INTERPRETATION

The Contractor's interpretation of contract requirements shall be binding upon the Subcontractor and complied with, except that the Subcontractor shall have the right to claim adjustment of the contract because of said interpretation, if said claim is made in writing within forty-eight (48) hours after ruling and direction.

ARTICLE 20. DISPUTES

MEDIATION: Any claim, dispute or other matter in controversy arising out of or related to this Agreement (including claims which may involve the Owner) shall be subject to mediation as a condition precedent to binding dispute resolution. Mediation, unless the parties mutually agree otherwise, shall be administered pursuant to or consistent with the Rules of the North Carolina Supreme Court Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions in effect on the date of the Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Wayne County, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof

CLAIMS INVOLVING OWNER: Disputes arising out of the Owner's acts, omissions or responsibilities shall be resolved in accordance with the disputes procedures in the Prime Contract. The Subcontractor shall have the right to exercise the Contractor's rights at the Subcontractor's sole cost and shall be bound thereby. The Contractor shall have no direct liability to the Subcontractor except to give the Subcontractor the opportunity to exercise the rights in the Prime Contract. The Subcontractor shall be required as a condition precedent to submitting a claim against the Owner to certify its claim in accordance with all certification requirements in the Prime Contract. The Subcontractor agrees to indemnify and hold harmless the Contractor for any defects or misrepresentations in its certifications, including any relating to cost or pricing data. In the event that arbitration is provided for in the Prime Contract for disputes between the Owner and the Contractor, the Subcontractor specifically agrees to submit its disputes arising out of the Owner's acts, omissions or responsibilities to

any arbitration proceeding between the Owner and the Contractor. The Subcontractor shall be given the opportunity to confer with the Contractor in the selection of arbitrators, unless the dispute is solely one between the Owner and the Subcontractor, in which event the Subcontractor may make the selection of arbitrators in the Contractor's name.

ARBITRATION: All disputes between the Contractor and the Subcontractor, not involving the Owner's acts, omissions or responsibilities shall be resolved by arbitration in accordance with the operative Sections of the North Carolina Revised Uniform Arbitration Act (Article 45C of Chapter 1 of the North Carolina General Statutes) and shall be engaged when either party delivers written notice of demand for arbitration to the other party. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. An arbitration pursuant to this Article may be joined with an arbitration involving common issues of law or fact between the Contractor and any person or entity with whom the Contractor has a contractual obligation to arbitrate disputes. Notwithstanding any other provisions of this Agreement, in any arbitration proceeding between the parties related to this Agreement, either party shall have the right to include, by consolidation, joinder or in any other manner, any person or entity whom either party believes to be substantially involved in a common question of fact or law with respect to such arbitration proceeding. The Subcontractor specifically agrees that any dispute shall not interfere with the Subcontractor's progress of its Work in any manner, and that the Subcontractor shall proceed with its Work as ordered. Likewise, the Contractor may proceed, in good faith, to remedy an alleged default by the Subcontractor. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof. Any such award shall be binding and enforceable against any persons, surety and/or bonding company, which guarantee the performance by the Subcontractor of this Agreement in any manner.

ARBITRATION PROCESS: Within fifteen (15) days of the receipt of written notice of demand, each party shall identify, by providing the name, address and telephone number to the other party, an arbitrator selected by them for purposes of resolving the matter which is the subject of the demand, and each party shall notify the arbitrator selected by such party that the arbitrator has been identified and that such arbitrator, acting jointly with the arbitrator selected by the other party, shall be required to select a third arbitrator within thirty (30) days of their selection as arbitrators. If either party fails to identify an arbitrator within such fifteen (15) day period, or if the two arbitrators selected by the Parties fail to select a third arbitrator within such thirty (30) day period, either party may petition any Wayne County, North Carolina Superior Court judge to appoint the initial arbitrator or the third arbitrator, as applicable, and such arbitrator or arbitrators so appointed shall serve with the arbitrator or arbitrators selected by the parties. Any arbitrator selected hereunder shall be an attorney who is experienced in arbitration and construction law. Arbitration proceedings shall be heard, conducted in, and resolved for all purposes of venue solely, exclusively, and only in Wayne County, North Carolina. The party filing a notice of demand for arbitration must assert in the demand all claims, disputes or other matters in question then known to that party on which arbitration is permitted to be demanded. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the cost of its own experts, evidence and counsel's fees, except that in the discretion of the arbitrators, any award may include the cost of a party's counsel and the expenses of the arbitration. This arbitration agreement provides for an award of attorneys' fees pursuant to N.C. Gen. Stat. § 1-569.21(b)(1).

ARTICLE 21. BACK-CHARGES

All charges and back-charges assessed by the Contractor against the Subcontractor shall be deemed accepted by the Subcontractor unless rejected in writing within fifteen (15) days. The Contractor is authorized to deduct and offset from any payments due the Subcontractor an amount equal to any and all sums, obligations, liabilities, back-charges, and claims (liquidated or otherwise), including mark-ups for overhead and profit, owed by the Subcontractor to the Contractor arising under this Agreement or any other contract or agreement between the Subcontractor and the Contractor.

ARTICLE 22. PLANT AND CLEANUP

The Subcontractor shall provide its own plant and facilities, including scaffolding and hoists, do its own cleanup, and repair or replace damaged, defective and defaced Work caused by its own negligence. The Subcontractor shall cleanup and remove from the site all of its rubbish, debris, etc. on a daily basis, and place all debris within containers supplied by the contractor unless the Contractor directs otherwise. Upon completion of the Subcontractor's Work, all the Subcontractor's materials, equipment, etc. must be immediately removed from the jobsite by the Subcontractor. Failure to comply will permit the Contractor to do so and back-charge the Subcontractor for the cost. If the Subcontractor uses any equipment (such as, but not limited to, a hoist, scaffolding, swing stage, etc.), plant, or facilities furnished to the Project by the Contractor or by another subcontractor, then the Subcontractor will be responsible for the operating expenses of such equipment when in use for the Subcontractor's benefit and shall be fully liable and responsible for its safe and proper care, use, and custody. Neither the Contractor nor the subcontractor furnishing such equipment, plant, or facilities shall be liable to any person for damages

caused by the use of such equipment, plant or facilities, or for conditions which may interrupt, delay, or interfere with the availability of such equipment to the Subcontractor. The Contractor reserves the exclusive right to schedule the use of such equipment, plant, and facilities in accordance with its determinations as to the needs of the Project and shall incur no liability to the Subcontractor as a result thereof.

ARTICLE 23. BANKRUPTCY AND DELINQUENT TAXES

In the event of any act of bankruptcy insolvency by the Subcontractor or notice of levy involving delinquent taxes owed by the Subcontractor, the Contractor shall have the right to withhold payments and apply the same to secure performance of the Subcontract without prejudice to all other rights against the Subcontractor or its surety.

ARTICLE 24. RESPONSIBILITY FOR WORK IN PLACE

The Subcontractor shall check all work performed by others necessary to “receive” the Subcontractor’s Work. Failure to give notice of any discrepancy shall relieve the Contractor of any responsibility therefore. The Subcontractor shall be responsible for all field measurements and shall check elevations and grades to insure proper fitting of its Work. It shall not be incumbent upon the Contractor to discover any mistakes, errors, omissions or deviations from the contract requirements in the Subcontractor’s drawings, and the Owner’s final approval of drawings made by the Subcontractor shall not relieve the Subcontractor from responsibility for unauthorized changes, deviations or omissions or for error of any sort in its drawings.

ARTICLE 25. LICENSES AND FEES

The Subcontractor shall be responsible for all taxes, permits, licenses and fees necessary to perform Work, including any increase therein, if any, during the life of this Agreement. This includes all trade permits, inspections, licenses, certifications, taxes and fees unless specifically excluded.

ARTICLE 26. LABOR FORCE

Any Work stoppage by employees which will unreasonably delay the progress of the Work will be a breach of this Agreement subject to the rights set forth in Article 14. The Subcontractor shall immediately remove from the Work such of his employees as the Contractor shall reasonably deem, after reasonable notice and opportunity to cure, incompetent, careless, insubordinate or otherwise undesirable. The Subcontractor shall employ at all times a sufficient number of workmen with sufficient equipment and proper materials which in the reasonable opinion of the Contractor shall be required to prosecute the Work in a diligent and expeditious manner.

ARTICLE 27. NONDISCRIMINATION

All Equal Opportunity or affirmative action requirements of the Prime Contract are incorporated by reference and shall be obligations of the Subcontractor. The Subcontractor is prohibited by applicable law and by this Subcontract from discriminating against any employee or applicant because of race, religion, color, sex or national origin. The Subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities. The Subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

ARTICLE 28. SUPERINTENDENCE

The Subcontractor will provide a fulltime English speaking superintendent, supervisor or foreman who shall be on-site while the Subcontractor's Work is ongoing. The superintendent will be competent, will be satisfactory to the Contractor, and will have full authority to act on the Subcontractor’s behalf. The superintendent must be able to communicate verbally and written in the English language. The Contractor shall have the right to require the Subcontractor to replace the superintendent if, in the opinion of the Contractor, the superintendent is not satisfactorily supervising the Work.

ARTICLE 29. PATENT, TRADEMARK AND COPYRIGHT INFRINGEMENT

The Subcontractor shall indemnify the Contractor from any use or infringement of patents, trademarks, and copyrights with respect to the Subcontractor's Work.

ARTICLE 30. ASSIGNMENT AND SUBCONTRACTING

The Subcontractor shall not assign this Agreement or the proceeds due or to become due to the Subcontractor, or subcontract any portion of the Work, without prior written approval of the Contractor. The determination of whether retaining the services of a second tier subcontractor is in the best interest of the project and the decision to proceed with a second tier subcontractor agreement is the sole responsibility of the Subcontractor. The Contractor reserves the right to review and reject any proposed second tier subcontractor. The Contractor reserves the right to review a copy of any and all second tier subcontract agreements. The Subcontractor's execution of an agreement with a second tier subcontractor does not release the Subcontractor from any of its responsibilities under the Contract Documents. The Subcontractor shall require that agreements with all tiers of sub-subcontractors make such sub-subcontractors bound by the Contract Documents, including but not limited to any audit requirements, to the same extent and with the same effect as if the sub-subcontractors were the Subcontractor. The Subcontractor shall be responsible for the acts, work, material, and equipment of all tiers of sub-subcontractors.

ARTICLE 31. NOTICES

All notices required or permitted pursuant to this Agreement shall be in writing and sent to the parties at the addresses set forth on this Agreement. Any notices under this Agreement shall be (i) hand delivered, (ii) sent by certified or registered mail, return receipt requested, or (iii) other recognized national delivery service such as Federal Express or United Parcel Service. Notice shall be deemed delivered upon receipt, or if sent via U.S. Mail, a notice shall be deemed delivered three (3) business days after mailing. Notice may be sent via facsimile, so long as the party sending the facsimile uses a machine that produces a printed confirmation of delivery, and retains the printed confirmation evidencing that the transmission was successfully completed as proof of delivery. Notices required by the various provisions of the Prime Contract (not otherwise dealt with herein) shall be due in the Contractor's office in one-half (½) the time specified in the Prime Contract so that the Contractor will have sufficient time to forward its notice within the required period. Failure of the Subcontractor to forward notices in a timely manner as required by the various equitable adjustment provisions of the Prime Contract shall operate to waive its rights to any such adjustments if the Owner rejects the claim.

ARTICLE 32. OWNER APPROVAL

This Agreement is contingent upon the Subcontractor or its product being approved by the Owner and/or the owner's authorized agent. If a disqualification occurs because of failure to comply with and strictly fulfill the obligations herein, said failure shall be deemed a breach by the Subcontractor. Any other exercise of rights of disqualification by the Owner shall render this Agreement null and void.

ARTICLE 33. ENTIRE AGREEMENT, SEVERABILITY AND WAIVER

This instrument is the entire Agreement between the parties. No oral representations or other agreements have been made by the Contractor except as stated in this Agreement. This Agreement may not be changed in any way except as herein provided or in writing signed by the Contractor's duly authorized officer or agent. In the event that any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal or otherwise unenforceable pursuant to applicable laws by an authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of provisions of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted. It is further agreed that no term or provision hereof may be waived by the Contractor except in writing signed by its duly authorized officer or agent. No action or failure to act by the Contractor shall constitute a waiver of any breach of any term or condition in the Agreement or any subsequent breach thereof, nor shall such action or failure to act constitute a waiver of any right offered the Contractor under this Agreement.

ARTICLE 34. SAFETY

The Subcontractor as defined in this paragraph shall include all tiers of sub-subcontractor. The Subcontractor shall take all necessary safety precautions in performing the Work. The Subcontractor, and all tiers of sub-subcontractor at a minimum, shall comply with all of the terms and conditions contained in the Contractor's Corporate Safety Plan and with all relevant and applicable federal (including OSHA), state and local safety regulations, standards and requirements. If there are any conflicts among the Contractor's Corporate Safety Plan and any federal, state and local safety regulations, standards and requirements, then the Subcontractor, at a minimum, shall comply with the most stringent requirement. The Subcontractor shall indemnify the Contractor from any failure to comply with these requirements including fines and abatement costs and delays to project. Failure to comply shall be a material breach of contract, subject to provisions of Article 14.

ARTICLE 35. PAYROLLS AND BASIC RECORDS

If the Prime Contract is a public contract with the U.S. Government, the Subcontractor and all tiers of sub-subcontractor shall: i) comply with the Davis-Bacon Act, the Copeland Anti-Kickback Act, and any other applicable statute that mandates compliance with labor reporting standards set forth by the U.S. Department of Labor; ii) maintain payrolls and basic records during the course of the Work and shall preserve them for a period of three (3) years thereafter, and iii) submit a weekly copy of all payrolls to the Contractor and the Contracting Officer. The aforementioned basic records shall contain the name and address of each employee, his correct classification, rate of pay (including fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid. Payroll records shall be submitted to the Contractor weekly. The Subcontractor shall indemnify the Contractor from any failure to comply with these requirements. Failure to comply shall be a material breach of contract, subject to provisions of Article 14.

ARTICLE 36. LIQUIDATED OR ACTUAL DAMAGES

Liquidated damages withheld by the Owner will be assessed against the Subcontractor for delay attributable to the Subcontractor's fault. In the event that liquidated or actual damages are assessed against the Contractor and it is determined that the Subcontractor is responsible to the Contractor for said liquidated damages, then the Subcontractor shall pay to the Contractor liquidated damages in addition to any damages incurred by the Contractor as the result of the Subcontractor's failure of performance. The Project completion date is 240 days from NTP. The Prime Contract requires liquidated damages for delay of Five Hundred Dollars (\$500.00) per calendar after the substantial completion. This clause is incorporated by reference into this Agreement. The Subcontractor will be assessed for liquidated damages for delay only in the case of the Owner assessing such damages against Contractor. Amounts will be attributable and proportionate to the delay caused by Subcontractor. Subcontractor will reimburse Contractor for all liquidated damages for delay that are assessed against Contractor and for which Subcontractor is responsible

ARTICLE 37. MECHANIC'S LIENS

In the event a subcontractor (including a supplier) of Subcontractor asserts their lien rights, asserts their bond rights, or files a materialman or mechanics lien against the project, the Subcontractor shall either secure a proper lien release or lien waiver; or bond off the lien pursuant to Chapter 44A -16 of the N.C. General Statutes within twenty (20) days of the filing of such lien. Contractor may withhold an amount, in its discretion, from payment to Subcontractor to address liens asserted by subcontractors of Subcontractor. The Subcontractor shall indemnify, and hold harmless both the Contractor and the Owner from and against all damages, losses, expenses, including without limitation, the Contractor's and the Owner's attorneys' fees, arising out of liens filed by subcontractors of the Subcontractor. The Subcontractor agrees to subordinate any lien to the Owner's lender's deeds of trust on the property, including any deeds of trust recorded or to be recorded after commencement of the project.

ARTICLE 38. EXECUTION

This Agreement must be executed by the Subcontractor and returned to the Contractor within fifteen (15) days of its receipt by the Subcontractor. If this Agreement is retained by the Subcontractor without executing and returning same within fifteen (15) days, it may be deemed accepted by the Contractor. If the Subcontractor begins the Work without executing this agreement; this agreement is deemed accepted by the Contractor. Until the Agreement is executed and returned to the Contractor, along with any required bonds and certificates of insurance, the Contractor has the right to withhold any payment due the Subcontractor.

ARTICLE 39. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to conflict of laws provisions thereof. Subject to the provisions of Article 20 of this Agreement, the Subcontractor irrevocably submits to the jurisdiction of any state or federal court sitting in Wayne County, North Carolina over any suit, action, or proceeding arising out of or relating to this Agreement. The Subcontractor irrevocably waives, to the fullest extent permitted by law, any objection that the Subcontractor may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Final judgment in any such suit, action, or proceeding brought in any such court shall be conclusive and binding upon the Subcontractor and may be enforced in any court in which the Subcontractor is subject to jurisdiction by a suit upon such judgment provided that service of process is effected upon the Subcontractor as

permitted by law.

ARTICLE 40. FEDERAL GOVERNMENT CONTRACTS

The following provisions apply to this Agreement only if the Owner is the Federal Government of the United States or one of its subdivisions.

- 40.1. Federal Acquisition Regulation - This Agreement is governed by the Federal Acquisition Regulation ("FAR"), including without limitation those clauses set forth at FAR 52.301. Because changes to these regulations may be issued at any time and particular agencies may issue supplemental regulations, current FAR provisions and individual project specifications must be consulted. In the event of a conflict between the FAR and this Agreement, the terms and conditions set forth in the FAR shall control.
- 40.2. Obligations Flowdown - The Subcontractor binds itself to the Contractor under this Agreement in the same manner as the Contractor is bound to the Owner under the Contract Documents, applicable FAR provisions and supplemental agency regulations; and the Subcontractor will so bind its lower-tier subcontractors. The Subcontractor shall make available to its lower-tier subcontractors the Contract Documents which are binding on their lower-tier subcontractors. The following FAR clauses are incorporated by reference as required by the Prime Contract (these clauses can be reviewed in their entirety at <https://www.acquisition.gov/>).
- 40.3 Notice Requirements - To the extent the Contract Documents or the FAR require the Contractor to give the various specific notices to the Owner as the Work progresses, the Subcontractor shall give timely written notice to the Contractor sufficiently in advance of the time limits to enable the Contractor to act in accordance with the Owner's requirements. Otherwise, the Subcontractor will be deemed to have waived any claims based on such events.
- 40.4 Wage Requirements -The Subcontractor expressly acknowledges that this is a Federal Government project which requires that all labor receive wages and/or benefits not less than those required by the applicable wage decision. The Subcontractor shall fully comply with all Davis-Bacon wage requirements of the Prime Contract and all requirements of Article 35-Payroll and Basic Records, of this Agreement.

ERNEST GLASS CO., INC.
Subcontractor

DANIELS & DANIELS CONSTRUCTION COMPANY, INC.
Contractor

Signature

Signature

Printed Name & Title

Printed Name & Title

Date

Signature of Witness

Date: _____

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