

# CROSSLAND

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## HEAVY CONTRACTORS

### STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

**Contract Date:**

[Date(Source=Attribute,Path=Contract.Date,Format="d")]

**Project:**

[ProjectName]  
*Job No.:* [Attribute(DomainPartition.JobNumber)]  
*Contract No.:* [Attribute(Contract.ContractNumber)]

**Subcontractor:**

[Attribute(Contract.Supplier.VendorCompany.LegalName)]  
[Attribute(Contract.Supplier.VendorCompany.ShortLabel)]  
[Attribute(Contract.Supplier.VendorContact.Office.Address.Address1)]  
[Attribute(Contract.Supplier.VendorContact.Office.Address.Address2)]  
[Attribute(Contract.Supplier.VendorContact.Office.Address.City)],  
[Attribute(Contract.Supplier.VendorContact.Office.Address.StateProvince)]  
[Attribute(Contract.Supplier.VendorContact.Office.Address.PostalCode)]  
*Phone:* [Attribute(Contract.Supplier.VendorContact.Office.Primary)]  
*Attn:* [Attribute(Contract.Supplier.VendorContact.ShortLabel)]

**Contract Amount:**

[Attribute(Contract.NotToExceedAmount)]

**Project Manager:**

[ProjectProjectManager.ShortLabel]  
[ProjectProjectManager.Office.Address.Address1]  
[ProjectProjectManager.Office.Address.Address2]  
[ProjectProjectManager.Office.Address.City]  
[ProjectProjectManager.Office.Address.StateProvinceCode],  
[ProjectProjectManager.Office.Address.PostalCode]  
*Office:* [ProjectProjectManager.Direct]  
*Cell:* [ProjectProjectManager.Mobile]  
*Email:* [ProjectProjectManager.EmailAddress]

**Superintendent/Jobsite Address:**

[ProjectSuperintendent.ShortLabel]  
[ProjectAddress1] [ProjectAddress2]  
[ProjectCity], [ProjectStateProvinceCode] [ProjectPostalCode]  
*Cell:* [ProjectSuperintendent.Mobile]  
*Email:* [ProjectSuperintendent.EmailAddress]

**Billing Address:**

[chcsubs@heavycontractors.com](mailto:chcsubs@heavycontractors.com)  
*Phone:* 620-429-1410 *Fax:* 620-429-2977

# **STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR**

(Where the Contractor and Subcontractor Share the Risk of Owner Payment)

## **TABLE OF ARTICLES**

1. AGREEMENT
2. SCOPE OF WORK
3. SUBCONTRACTOR'S RESPONSIBILITIES
4. CONTRACTOR'S RESPONSIBILITIES
5. PROGRESS SCHEDULE
6. SUBCONTRACT AMOUNT
7. CHANGES IN THE SUBCONTRACT WORK
8. PAYMENT
9. INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION
10. CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT
11. DISPUTE RESOLUTION
12. MISCELLANEOUS PROVISIONS
13. EXISTING SUBCONTRACT DOCUMENTS

This Agreement has important legal and insurance consequences. Consultation with an attorney and an insurance consultant is encouraged with respect to its completion or modification.

**ARTICLE 1  
AGREEMENT**

The Effective Date of this Agreement is [Date(Source=Attribute,Path=Contract.Date,Format="d")],  
by and between the

CONTRACTOR:

[ProjectProjectManager.Company.LongLabel]  
[ProjectProjectManager.Office.Address.Address1]  
[ProjectProjectManager.Office.Address.Address2]  
[ProjectProjectManager.Office.Address.City],  
[ProjectProjectManager.Office.Address.StateProvinceCode]  
[ProjectProjectManager.Office.Address.PostalCode]

and the

SUBCONTRACTOR:

[Attribute(Contract.Supplier.VendorCompany.LegalName)] [END THEN]  
[ELSE] [Attribute(Contract.Supplier.VendorCompany.ShortLabel)] [END ELSE]  
[END IF]  
[Attribute(Contract.Supplier.VendorContact.Office.Address.Address1)]  
[Attribute(Contract.Supplier.VendorContact.Office.Address.Address2)]  
[Attribute(Contract.Supplier.VendorContact.Office.Address.City)],  
[Attribute(Contract.Supplier.VendorContact.Office.Address.StateProvince)]  
[Attribute(Contract.Supplier.VendorContact.Office.Address.PostalCode)]  
Phone: [Attribute(Contract.Supplier.VendorContact.Office.Primary)]  
Attn: [Attribute(Contract.Supplier.VendorContact.ShortLabel)]

for services in connection with the

SUBCONTRACT WORK:

*Contract No.:* [Attribute(Contract.ContractNumber)]  
[Attribute(Contract.OverallProjectScope)]  
[Attribute(Contract.ScopeofWorkUnlimited)]  
[Attribute(Contract.ScopeofWork)]

for the following

PROJECT:

[ProjectName]  
[ProjectAddress1] [ProjectAddress2]  
[ProjectCity], [ProjectStateProvinceCode] [ProjectPostalCode]

whose

OWNER is:

[ProjectOwner.Company.LongLabel]  
[ProjectOwner.Office.Address.Address1] [ProjectOwner.Office.Address.Address2]  
[ProjectOwner.Office.Address.City], [ProjectOwner.Office.Address.StateProvinceCode]  
[ProjectOwner.Office.Address.PostalCode]

The ARCHITECT/ENGINEER for the Project is:

[ProjectArchitect.Company.LongLabel]  
[ProjectArchitect.Office.Address.Address1] [ProjectArchitect.Office.Address.Address2]  
[ProjectArchitect.Office.Address.City],  
[ProjectArchitect.Office.Address.StateProvinceCode]  
[ProjectArchitect.Office.Address.PostalCode]

Notice to the parties shall be given at the above addresses.

**ARTICLE 2  
SCOPE OF WORK**

- 2.1 SUBCONTRACT WORK:** The Contractor contracts with the Subcontractor as an independent contractor to provide all labor, materials, equipment and services necessary or incidental to complete the Subcontract Work described in Article 1 for the Project in accordance with, and reasonably inferable from, that which is indicated in the Subcontract Documents, and consistent with the Progress Schedule, as may change from time to time. The Subcontractor shall perform the Subcontract Work under the general direction of the Contractor and in accordance with the Subcontract Documents.
- 2.2 CONTRACTOR'S WORK:** The Contractor's Work is the construction and services required of the Contractor to fulfill its obligations pursuant to the Owner-Contractor Agreement with the Owner (the Work). The Subcontract Work is a portion of the Work.
- 2.3 SUBCONTRACT DOCUMENTS:** The Subcontract Documents include the Agreement, the Owner-Contractor Agreement, special conditions, general conditions, specifications, drawings, addenda, Subcontract Change Orders, Invitation to Bid (if applicable), amendments, and any pending and exercised alternates. The Contractor shall make available to the Subcontractor, prior to the execution of the Subcontract Agreement, copies of the Subcontract Documents to which the Subcontractor will be bound. The Subcontractor similarly shall make copies of applicable portions of the Subcontract Documents available to its proposed subcontractors and suppliers. Nothing shall prohibit the Subcontractor from obtaining copies of the Subcontract Documents from the Contractor at any time after the Subcontract Agreement is executed. The Subcontract Documents existing at the time of the execution of this Agreement are set forth in Article 13.
- 2.4 CONFLICTS:** In the event of a conflict between this Agreement and the other Subcontract Documents, this Agreement shall govern.
- 2.5 EXTENT OF AGREEMENT:** Nothing in this Agreement shall be construed to create a contractual relationship between persons or entities other than the Contractor and Subcontractor. This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 2.6 DEFINITIONS**
- 2.6.1** Wherever the term Progress Schedule is used in this Agreement, it shall be read as Project Schedule when that term is used in the Subcontract Documents.
- 2.6.2** Whenever the term Change Order is used in the Agreement, it shall be read as Change Document when that term is used in the Subcontract Documents.
- 2.6.3** Unless otherwise indicated, the term Day shall mean calendar day.
- 2.6.4** Designer shall mean a licensed design professional.

**ARTICLE 3  
SUBCONTRACTOR'S RESPONSIBILITIES**

- 3.1 OBLIGATIONS:** The Contractor and Subcontractor are hereby mutually bound by the terms of this Subcontract. To the extent the terms of the Owner-Contractor Agreement apply to the Work of the Subcontractor, then the Contractor hereby assumes toward the Subcontractor all the obligations, rights, duties, and redress that the Owner under the

Owner-Contractor Agreement assumes toward the Contractor. In an identical way, the Subcontractor hereby assumes toward the Contractor all the same obligations, rights, duties, and redress that the Contractor assumes toward the Owner and the Architect/Engineer under the Owner-Contractor Agreement.

- 3.2 RESPONSIBILITIES:** The Subcontractor agrees to furnish its best skill and judgment in the performance of the Subcontract Work, and to cooperate with the Contractor so that the Contractor may fulfill its obligations to the Owner. The Subcontractor shall furnish all of the labor, materials, equipment, and services, including but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding, as are necessary for the proper performance of the Subcontract Work. The Subcontractor shall provide the Contractor a list of its proposed subcontractors and suppliers upon execution of this Agreement, and be responsible for taking field dimensions, providing tests, obtaining required permits related to the Subcontract Work and affidavits, ordering of material, and all other actions as required to meet the Progress Schedule. The Subcontractor is required to notify the Contractor, in writing, of any additions or changes to its lists of subcontractors and suppliers within five (5) days of such addition or change. Subcontractor shall have a continuing obligation for the duration of this Agreement to provide a current list to Contractor, in writing, of all of its subcontractors and suppliers.
- 3.3 INCONSISTENCIES AND OMISSIONS:** The Subcontractor shall make a careful analysis and comparison of the drawings, specifications, other Subcontract Documents, bid packages, and information furnished by the Owner relative to the Subcontract Work. Such analysis and comparison shall be solely for the purpose of facilitating the Subcontract Work and not for the discovery of errors, inconsistencies or omissions in the Subcontract Documents, nor for ascertaining if the Subcontract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules or regulations. Should the Subcontractor discover any errors, inconsistencies or omissions in the Subcontract Documents, the Subcontractor shall report such discoveries to the Contractor in writing within three (3) days. Upon receipt of notice, the Contractor shall instruct the Subcontractor as to the measures to be taken, and the Subcontractor shall comply with the Contractor's instructions. If the Subcontractor performs Work knowing it to be contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to the Contractor and advance approval by appropriate authorities, including the Contractor, the Subcontractor shall assume appropriate responsibility for such Work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation. Nothing in this Paragraph 3.3 shall relieve the Subcontractor of responsibility for its own errors, inconsistencies and omissions.
- 3.4 SITE VISITATION:** Prior to performing any portion of the Subcontract Work, the Subcontractor shall conduct a visual inspection of the Project site to become generally familiar with local conditions and to correlate site observations with the Subcontract Documents. If the Subcontractor discovers any discrepancies between its site observations and the Subcontract Documents, such discrepancies shall be promptly reported to the Contractor.
- 3.5 INCREASED COSTS AND/OR TIME:** The Subcontractor may assert a Claim as provided in Article 7 if the Contractor's clarifications or instructions in response to requests for information are believed to require additional time or cost. If the Subcontractor fails to perform the reviews and comparisons required in Paragraphs 3.3 and 3.4 above, to the extent the Contractor is held liable to the Owner because of the Subcontractor's failure, the Subcontractor shall pay the costs and damages to the Contractor that would have been avoided if the Subcontractor had performed those obligations.
- 3.6 COMMUNICATIONS:** Unless otherwise provided in the Subcontract Documents, and except for emergencies, the Subcontractor shall direct all communications related to the

Project to the Contractor.

### **3.7 SUBMITTALS**

**3.7.1** The Subcontractor shall promptly submit for approval to the Contractor, all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Subcontract Documents and/or bid packages. The Subcontractor shall be responsible to the Contractor for the accuracy and conformity of its submittals to the Subcontract Documents. The Subcontractor shall prepare and deliver its submittals to the Contractor in such time and sequence so as not to delay the Contractor or others in the performance of the Work. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Subcontract Documents unless express written approval is obtained from the Contractor and Owner authorizing such deviation, substitution or change. In the event that the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees upon request, to submit in a timely fashion to the Contractor for approval, any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by the Contractor, Owner or the Architect/Engineer. [Attribute(Contract.Notes)]

**3.7.2** The Contractor, Owner, and Architect/Engineer are entitled to rely on the adequacy, accuracy and completeness of any professional certifications required by the Subcontract Documents concerning the performance criteria of systems, equipment or materials, including all relevant calculations and any governing performance requirements.

### **3.8 DESIGN DELEGATION**

**3.8.1** If the Subcontract Documents (1) specifically require the Subcontractor to provide design services and (2) specify all design and performance criteria, the Subcontractor shall provide those design services necessary to satisfactorily complete the Subcontract Work. Design services provided by the Subcontractor shall be procured from licensed design professionals retained by the Subcontractor as permitted by the law of the place where the Project is located. The Designer's signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals prepared by the Designer. Shop drawings and other submittals related to the Subcontract Work designed or certified by the Designer, if prepared by others, shall bear the Subcontractor's and the Designer's written approvals when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy and the completeness of the services, certifications or approvals performed by the Designer.

**3.8.2** If the Designer is an independent professional, the design services shall be procured pursuant to a separate agreement between the Subcontractor and the Designer. The Subcontractor-Designer agreement shall not provide for any limitation of liability, except to the extent that consequential damages are waived pursuant to Paragraph 5.4, or exclusion from participation in the multi-party proceedings requirement of Paragraph 11.4. The Designer(s) is (are): [Attribute(Contract.DesignerHiredbySubcontractor)]. The Subcontractor shall notify the Contractor in writing if it intends to change the Designer. The Subcontractor shall be responsible for conformance of its design with the information given and the design concept expressed in the Subcontract Documents. The Subcontractor shall not be responsible for the adequacy of the performance or design criteria required by the Subcontract Documents.

**3.8.3** The Subcontractor shall not be permitted or required to provide design services in violation of any applicable law.

**3.9 AS-BUILT RECORDS:** The Subcontractor shall correctly maintain and update the Contractor's superintendent's as-built records weekly; after the completion of each phase or designated portion of work; and at the completion of the overall project for the Subcontract Work.

**3.10 TEMPORARY SERVICES:** The Subcontractor's responsibilities for temporary services are set forth in Exhibit [Attribute(Contract.SubcontractorsTempServicesExhibit)].

**3.11 COORDINATION:** The Subcontractor shall:

**3.11.1** cooperate with the Contractor and all others whose Work may interface with the Subcontract Work;

**3.11.2** specifically note and immediately advise the Contractor of any such interface with the Subcontract Work; and

**3.11.3** participate in the preparation of coordination drawings and work schedules in areas of congestion.

**3.12 SUBCONTRACTOR'S REPRESENTATIVE:** The Subcontractor shall designate a person, subject to the Contractor's approval, who shall be the Subcontractor's authorized representative. The representative shall be the only person to whom the Contractor shall issue instructions, orders or directions, except in an emergency. The Subcontractor's representative is [Attribute(Supplier.VendorContact.ShortLabel)] who is agreed to by the Contractor, is OSHA competent, and authorized to make decisions concerning this Agreement.

**3.13 TESTS AND INSPECTIONS:** The Subcontractor shall schedule all required tests, approvals, and inspections of the Subcontract Work at appropriate times, so as not to delay the progress of the Work. The Subcontractor shall give proper written notice to all required parties of such tests, approvals and inspections. The Subcontractor shall bear all expenses associated with tests, inspections and approvals required of the Subcontractor by the Subcontract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity approved by the Contractor and Owner. Required certificates of testing, approval or inspection shall, unless otherwise required by the Subcontract Documents, be secured by the Subcontractor and delivered to the Contractor's Project Manager within seven (7) days of the event unless there is reasonable evidence to justify an extended period for delivery.

**3.14 CLEANUP:**

**3.14.1** Subcontractor shall at all times during its performance of the Subcontract Work keep the work site clean and free from debris resulting from the Subcontract Work. Prior to discontinuing the Subcontract Work in an area, the Subcontractor shall clean the area and remove all its rubbish and its construction equipment, tools, machinery, waste and surplus materials. The Subcontractor shall make provisions to minimize and confine dust and debris resulting from its construction activities. The Subcontractor shall not be held responsible for unclean conditions caused by others.

**3.14.2** If the Subcontractor fails to commence compliance with cleanup duties within forty-eight (48) hours after verbal or written notification from the Contractor of non-compliance, the Contractor may implement appropriate cleanup measures without further notice, and the cost thereof shall be deducted from any amounts due or to become due the Subcontractor.

**3.15 SAFETY:**

**3.15.1** The Subcontractor is required to perform the Subcontract Work in a safe and



reasonable manner. The Subcontractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

**3.15.1.1** employees and other persons at the site;

**3.15.1.2** materials and equipment stored at the site or at offsite locations for use in performance of the Work; and

**3.15.1.3** all property and structures located at the site and adjacent to work areas, whether or not said property or structures are part of the Project, or involved in the Work.

**3.15.2** The Subcontractor shall give all required notices and comply with all applicable rules, regulations, orders and other lawful requirements established to prevent injury, loss or damage to persons or property.

**3.15.3** The Subcontractor shall implement appropriate safety measures pertaining to the Subcontract Work and the Project, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the site and adjacent to the site from injury, loss or damage.

**3.15.4** The Subcontractor shall exercise extreme care in carrying out any of the Subcontract Work which involves explosive or other dangerous methods of construction or hazardous procedures, materials, or equipment. The Subcontractor shall use properly qualified individuals or entities to carry out the Subcontract Work in a safe and reasonable manner so as to reduce the risk of bodily injury or property damage.

**3.15.5** Damage or loss not insured under property insurance, which may arise from the performance of the Subcontract Work, to the extent of the negligence attributed to such acts or omissions of the Subcontractor, or anyone for whose acts the Subcontractor may be liable, shall be promptly remedied by the Subcontractor. Damage or loss attributable to the acts or omissions of the Contractor, and not to the Subcontractor, shall be promptly remedied by the Contractor.

**3.15.6** The Subcontractor is required to designate an individual at the site, in the employ of the Subcontractor, who shall act as the Subcontractor's OSHA competent safety representative with a duty to prevent accidents. Unless otherwise identified by the Subcontractor in writing to the Contractor, the designated safety representative shall be the Subcontractor's project superintendent.

**3.15.7** The Subcontractor has an affirmative duty not to overload the structures or conditions at the site and shall take reasonable steps not to load any part of the structures or site so as to give rise to an unsafe condition, or create an unreasonable risk of bodily injury or property damage. The Subcontractor shall have the right to request in writing, from the Contractor, loading information concerning the structures at the site.

**3.15.8** The Subcontractor shall give prompt written notice to the Contractor of any accident involving bodily injury requiring a physician's care, any property damage exceeding five-hundred dollars (\$500.00) in value, or any failure that could have resulted in serious bodily injury, whether or not such an injury was sustained.

**3.15.9** Prevention of accidents at the site is the responsibility of the Contractor, Subcontractor, and all other subcontractors, persons, and entities at the site. Establishment of a safety program by the Contractor shall not relieve the Subcontractor or other parties of their safety responsibilities. The Subcontractor shall establish its own 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 Subcontract Documents. The Subcontractor shall comply with the [ProjectProjectManager.Company.ShortLabel] Safety Program. The 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 the Contractor deems unsafe, until corrective measures satisfactory to the Contractor shall have been taken. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility for such practices. The Subcontractor shall notify the Contractor immediately following an accident and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by the Contractor. Each party to this Agreement shall indemnify the other party from and against fines or penalties imposed as a result of safety violations committed by the other, but only to the extent that such fines or penalties are caused by its failure to comply with applicable safety requirements.

- 3.16 PROTECTION OF THE WORK:** The Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of others from damage caused by the Subcontractor's operations. Should the Subcontractor cause damage to the Work or property of the Owner, the Contractor, or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor. If the Subcontractor fails to remedy the damage within forty-eight (48) hours after verbal or written notification from the Contractor, the Contractor may remedy the damage without further notice and the cost thereof shall be deducted from the amounts due or to become due the Subcontractor, unless such costs are recovered under applicable property insurance.
- 3.17 PERMITS, FEES, LICENSES AND TAXES:** The Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work, and shall be responsible for all permits, fees, licenses, assessments, inspections, testing and taxes necessary to complete the Subcontract Work in accordance with the Subcontract Documents. To the extent reimbursement is obtained by the Contractor from the Owner under the Owner-Contractor Agreement, the Subcontractor shall be compensated for additional costs resulting from taxes enacted after the date of this Agreement.
- 3.18 ASSIGNMENT OF SUBCONTRACT WORK:** The Subcontractor shall not assign the whole, or any part of the Subcontract Work, without prior written approval of the Contractor.
- 3.19 HAZARDOUS MATERIALS:** To the extent that the Contractor has rights or obligations under the Owner-Contractor Agreement, or by law regarding hazardous materials as defined by the Subcontract Document within the scope of the Subcontract Work, the Subcontractor shall have the same rights or obligations.
- 3.20 SAFETY DATA SHEET (SDS):** The Subcontractor shall submit to the Contractor all Safety Data Sheets required by law for materials or substances necessary for the performance of the Subcontract Work. SDS obtained by the Contractor from other subcontractors or sources shall be made available to the Subcontractor by the Contractor.
- 3.21 LAYOUT RESPONSIBILITY AND LEVELS:** The Contractor shall establish principal axis lines of the building and site, and benchmarks. The Subcontractor shall layout, and is strictly responsible for the accuracy of the Subcontract Work and for any loss or damage to the Contractor or others by reason of the Subcontractor's failure to layout or perform Subcontract Work correctly. The Subcontractor shall exercise prudence so that the actual final conditions and details shall result in alignment of finish surfaces.
- 3.22 WARRANTIES AND GUARANTEES:** The Subcontractor warrants that all materials and equipment furnished under this Agreement shall be new, unless otherwise specified, of good quality, and in conformance with the Subcontract Documents. The Subcontractor further

warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects. Work, materials, or equipment not conforming to these requirements may be considered defective. Warranties shall commence on the date of Substantial Completion of the Work, a designated portion, or as designated in the Owner-Contractor Agreement. The date in the Owner-Contractor Agreement shall be controlling.

**3.22.1** Warranties or guarantees as described in paragraph 3.22.2 shall be provided by the Subcontractor to the Contractor when the Subcontract Work is 80% complete with the project or designated portion of the project. These warranties or guarantees shall state "from Substantial Completion" or "from partial occupancy" for a designated portion of the project. The Contractor will provide the Subcontractor the date of Substantial Completion or Partial Occupancy for the Subcontractors records after it has been acquired.

**3.22.2** Specified Product Warranty or Guarantees requiring the Substantial Completion or Partial Occupancy date to execute shall be provided by the Subcontractor to the Contractor within ten (10) days after receipt of the date to be used from the Contractor.

**3.22.3** Standard Product Warranty or Guarantees shall be provided by the Subcontractor to the Contractor with the Subcontractors submittals described in paragraph 3.7 of this Agreement.

### **3.23 UNCOVERING/CORRECTION OF SUBCONTRACT WORK**

#### **3.23.1 UNCOVERING OF SUBCONTRACT WORK**

**3.23.1.1** If required in writing by the Contractor, the Subcontractor must uncover any portion of the Subcontract Work, which has been covered by the Subcontractor in violation of the Subcontract Documents, or contrary to a directive issued to the Subcontractor by the Contractor. Upon receipt of a written directive from the Contractor, the Subcontractor shall uncover such Work for the Contractor or Owner's inspection and restore the uncovered Subcontract Work to its original condition at the Subcontractor's time and expense.

**3.23.1.2** The Contractor may direct the Subcontractor to uncover portions of the Subcontract Work for inspection by the Owner or Contractor at any time. The Subcontractor is required to uncover such Work whether or not the Contractor or Owner had requested to inspect the Subcontract Work prior to it being covered. Except as provided in Clause 3.23.1.1, this Agreement shall be adjusted by change order for the cost and time of uncovering and restoring any Work which is uncovered for inspection and proves to be installed in accordance with the Subcontract Documents, provided the Contractor had not previously instructed the Subcontractor to leave the Work uncovered. If the Subcontractor uncovers Work pursuant to a directive issued by the Contractor, and such Work upon inspection does not comply with the Subcontract Documents, the Subcontractor shall be responsible for all costs and time of uncovering, correcting and restoring the Work so as to make it conform to the Subcontract Documents. If the Contractor or some other entity for which the Subcontractor is not responsible caused the nonconforming condition, the Contractor shall be required to adjust this Agreement by change order for all such costs and time.

#### **3.23.2 CORRECTION OF WORK**

**3.23.2.1** If the Architect/Engineer or Contractor rejects the Subcontract Work or the Subcontract Work is not in conformance with the Subcontract Documents, the Subcontractor shall promptly correct the Subcontract Work whether it had been fabricated, installed or completed and provide any documentation requested by Architect/Engineer or Contractor for record that the correction has been completed.

The Subcontractor shall be responsible for the costs of correcting such Subcontract Work, any additional testing, inspections, and compensation for services and expenses of the Architect/Engineer and Contractor made necessary by the defective Subcontract Work.

**3.23.2.2** In addition to the Subcontractor's obligations under Paragraph 3.22, the Subcontractor agrees to promptly correct, within any time periods required under the Owner-Contractor Agreement, after receipt of a written notice from the Contractor, all Subcontract Work performed under this Agreement which proves to be defective in workmanship or materials within a period of two years from the date of Substantial Completion of the Subcontract Work or for a longer period of time as may be required by specific warranties in the Subcontract Documents. Substantial Completion of the Subcontract Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Subcontract Documents, so that the Owner can occupy or utilize the Project, or a designated portion, for the use of which it is intended or such later time as required by the Owner-Contractor Agreement.

**3.23.3** The Subcontractor's correction of Subcontract Work pursuant to this Paragraph 3.23 shall not exceed the two-year period for the correction of Subcontract Work, but if Subcontract Work is first performed after Substantial Completion, the two-year period for corrections shall be extended by the time period after Substantial Completion and the performance of that portion of Subcontract Work.

**3.23.4** If the Subcontractor's correction or removal of Subcontract Work destroys or damages completed or partially completed Work of the Owner, the Contractor, or any separate contractors, the Subcontractor shall be responsible for the cost of correcting such destroyed or damaged construction.

**3.23.5** If portions of the Subcontract Work which do not conform with the requirement of the Subcontract Documents are neither corrected by the Subcontractor nor accepted by the Contractor, the Subcontractor shall remove such Subcontract Work from the Project site, if so directed by the Contractor.

**3.23.6** The Subcontractor shall reimburse the Contractor for the reasonable cost of correcting defective or nonconforming Subcontract Work in accordance with the Subcontract Documents. The Subcontractor's obligation to correct Subcontract Work within two years as described in this Paragraph 3.23 does not limit the enforcement of the Subcontractor's other obligations with regard to the Agreement and the Subcontract Documents.

**3.24 MATERIALS OR EQUIPMENT FURNISHED BY OTHERS:** In the event the scope of the Subcontract Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to exercise proper care in receiving, handling, storing and installing such items, unless otherwise provided in the Subcontract Documents. The Subcontractor shall examine the items provided and report to the Contractor in writing, any items it may discover that do not conform to requirements of the Subcontract Documents. The Subcontractor shall not proceed to install non-conforming items without further instructions from the Contractor. Loss or damage due to acts or omissions of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor.

**3.25 SUBSTITUTIONS:** No substitutions shall be made in the Subcontract Work unless permitted in the Subcontract Documents, and only upon the Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions.

**3.26 USE OF CONTRACTOR'S EQUIPMENT:** The Subcontractor, its agents, employees, subcontractors or suppliers shall use the Contractor's equipment only with the express

written permission of the Contractor's designated representative, and in accordance with the Contractor's terms and conditions for such use. If the Subcontractor or any of its agents, employees, subcontractors, or suppliers utilize any of the Contractor's equipment, including machinery, tools, scaffolding, hoists, lifts, or similar items owned, leased, or under the control of the Contractor, the Subcontractor shall defend, indemnify and be liable to the Contractor as provided in Article 9 for any loss or damage (including bodily injury or death) which may arise from such use, except such loss or damage that is caused solely by the negligence of the Contractor's employees operating the Contractor's equipment.

**3.27 WORK FOR OTHERS:** Until final completion of the Subcontract Work, the Subcontractor agrees not to perform any work directly for the Owner or any tenants, or deal directly with the Owner's representatives in connection with the Subcontract Work, unless otherwise approved in writing by the Contractor.

### **3.28 SUBCONTRACT BONDS**

**3.28.1** The Subcontractor [Attribute(Contract.BondRequired)] furnish to the Contractor, as the named Obligee, performance, payment, and maintenance bonds on the appropriate Crossland surety bond forms to secure Subcontractor's obligations related to Subcontract Work.

**3.28.2** All bonds required of the Subcontractor shall be on a Crossland bond form and by a surety in the Department of the Treasury's current listing of certified surety companies (T-listed), and in the full amount of the Subcontract Amount, unless otherwise specified.

**3.28.3** If Subcontractor seeks reimbursement of the cost of any bonds required under this Agreement, such amount shall be included in the Subcontract Amount and such amount shall not exceed 3% of the Subcontract Amount unless previously approved by Contractor in writing. Subject to the foregoing, the Subcontractor shall be reimbursed, without retainage, for the cost of any required bonds simultaneously with the first progress payment.

**3.28.4** In the event the Subcontractor shall fail to promptly provide any required bonds, the Contractor may terminate this Agreement and enter into a subcontract for the balance of the Subcontract Work with another subcontractor. All Contractor costs and expenses, incurred by the Contractor as result of said termination, shall be paid by the Subcontractor and/or Subcontractor's surety.

**3.28.5** All Subcontract bonds must be executed and returned prior to the Subcontractor's commencement of Work.

**3.29 SYSTEMS AND EQUIPMENT:** Coordinating with the Contractor and with the assistance of the Owner's maintenance personnel, the Subcontractor shall direct the check-out and operations of systems and equipment for readiness, and shall assist in the initial startup and the testing of the Subcontract Work. In preparation for instructing the Owner's personnel in operation and maintenance and the performance of, the Subcontractor shall do the following:

**3.29.1** submit Operation and Maintenance Manuals to the Contractor prior to Subcontractor's work reaching 80% complete for the project or designated portion or earlier if required by the project schedule or directed in the Owner-Contractor Agreement;

**3.29.2** submit proposed agenda's for instructing the Owner's personnel in operation and maintenance by no later than ninety (90) days prior to the scheduled event or earlier if directed in the Owner-Contractor Agreement. The Subcontractor's agenda(s)

shall include the proposed time allotted for the event;

**3.29.3** submit air test and balance reports, startup reports, miscellaneous test reports, and inspections to the Contractor in accordance with paragraph 3.13 of this agreement;

**3.29.4** turn over spare parts and special tools in conjunction with the corresponding Owner instruction event;

**3.29.5** and submit required records of the Owner instruction event to the Contractor within seven (7) days of the event.

**3.30 COMPLIANCE WITH LAWS:** The Subcontractor agrees to be bound by, and at its own costs comply with, all federal, state and local laws, ordinances and regulations (the Laws) applicable to the Subcontract Work, including but not limited to, equal employment opportunity, minority business enterprise, women's business enterprise, disadvantaged business enterprise, safety and all other Laws with which the Contractor must comply. The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply with Laws, including, but not limited to, any fines, penalties or corrective measures, except as provided in Subparagraph 3.15.9.

**3.31 CONFIDENTIALITY:** To the extent the Owner-Contractor Agreement provides for the confidentiality of any of the Owner's proprietary or otherwise confidential information disclosed in connection with the performance of the Agreement, the Subcontractor is equally bound by the Owner's confidentiality requirements.

**3.32 ROYALTIES, PATENTS, AND COPYRIGHTS:** The Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Subcontractor and incorporated in the Subcontract Work. The Subcontractor shall defend, indemnify and hold the Contractor and Owner harmless from all suits or claims for infringement of any patent right or copyrights arising out of such selection. The Subcontractor shall be liable for all loss, including all costs, expenses, and attorneys' fees, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Subcontract Documents. However, if the Subcontractor has reason to believe that a particular design, process or product required by the Subcontract Documents is an infringement of a patent, the Subcontractor shall promptly furnish such information to the Contractor or be responsible to the Contractor and Owner for any loss sustained as a result.

**3.33 LABOR RELATIONS:** It is understood that the subcontracts will be awarded and labor will be employed without discrimination as to whether employees of any Contractor, Subcontractor, or those employed by the Owner of the Project are members or nonmembers of any labor organization and the Subcontractor accepts this Agreement with that understanding. The Subcontractor agrees to employ workers and mechanics on the Project who will work at all times in harmony with other workers and mechanics on the Project. The Subcontractor agrees to cooperate with the Contractor and to direct its employees to use such job entrances or gates as Contractor may designate for Subcontractor's use. Further, Subcontractor agrees to use its best efforts to avoid disruption of work from any labor dispute (but shall not thereby be obligated to accede to union demands). Should there be a work stoppage caused by a strike, picketing, boycott, or be any voluntary or involuntary cessation of work by employees of the Subcontractor, which in the judgment of the Contractor will cause, or is likely to cause unreasonable delay to the progress of construction, the Contractor shall have the right to declare the Subcontractor in default of

this understanding and agreement and may take such steps as necessary to finish the uncompleted portion of the Work. Contractor's remedy shall be in accordance with the provisions contained in this Agreement.

**3.34 IMMIGRATION COMPLIANCE:** I/Subcontractor hereby certify that Contractor has communicated ICE Best Employment Practices to my organization and has requested that we adhere to them. On behalf of Subcontractor, we agree to adhere to these best practices. I/Subcontractor understands it is my duty to monitor my organization's compliance with these best practices as they may be revised and modified. I/Subcontractor hereby certify that I/Subcontractor and all employees of this company and/or contractors/vendors of this company are duly authorized to work in the United States, and this company complies with requirements of the Immigration Reform and Control Act (IRCA) and other federal and state laws governing identity and employment authorization verification. Should Contractor and/or any of its owners or employees incur any liability or legal expenses in connection with my/Subcontractor's failure to comply with federal immigration laws or applicable state laws, I/Subcontractor agree(s) to defend and indemnify Contractor and/or any of its owners or employees for any such liability or legal expenses incurred.

#### **ARTICLE 4 CONTRACTOR'S RESPONSIBILITIES**

- 4.1 CONTRACTOR'S REPRESENTATIVE:** The Contractor shall designate a person who shall be the Contractor's authorized representative. The Contractor's representative shall be the only person the Subcontractor shall look to for instructions, orders and/or directions, except in an emergency. The Contractor's representative is [ProjectProjectManager.ShortLabel].
- 4.2 PAYMENT BOND REVIEW:** The Contractor's payment bond for the Project, if any, shall be made available by the Contractor for review and copying upon request by the Subcontractor.
- 4.3 OWNER'S ABILITY TO PAY**
- 4.3.1** The Subcontractor shall have the right upon request to receive from the Contractor such information as the Contractor has obtained relative to the Owner's financial ability to pay for the Work, including any subsequent material variation in such information. The Contractor, however, does not warrant the accuracy or completeness of the information provided by the Owner.
- 4.3.2** If the Subcontractor does not receive the information referenced in Subparagraph 4.3.1 with regard to the Owner's ability to pay for the Work as required by the Contract Documents, the Subcontractor may request the information from the Owner and/or the Owner's lender.
- 4.4 CONTRACTOR APPLICATION FOR PAYMENT:** Upon request, the Contractor shall give the Subcontractor a copy of the most current Contractor application for payment reflecting the amounts approved and/or paid by the Owner for the Subcontract Work performed to date.
- 4.5 INFORMATION OR SERVICES:** The Subcontractor is entitled to request through the Contractor any information or services relevant to the performance of the Subcontract Work, which is under the Owner's control. To the extent the Contractor receives such information and services, the Contractor shall provide them to the Subcontractor. The Contractor, however, does not warrant the accuracy or completeness of the information provided by the Owner.



- 4.6 STORAGE AREA:** The Contractor shall allocate adequate storage areas, if available, for the Subcontractor's materials and equipment during the course of the Subcontract Work.
- 4.7 TIMELY COMMUNICATIONS:** The Contractor shall transmit to the Subcontractor, with reasonable promptness, all submittals, transmittals, and written approvals relative to the Subcontract Work. Unless otherwise specified in the Subcontract Documents, communication by and with the Subcontractor's subcontractors, material men, and suppliers shall be through the Subcontractor.
- 4.8 USE OF SUBCONTRACTOR'S EQUIPMENT:** The Contractor, its agents, employees or suppliers shall use the Subcontractor's equipment only with the express written permission of the Subcontractor's designated representative and in accordance with the Subcontractor's terms and conditions for such use. If the Contractor or any of its agents, employees or suppliers utilize any of the Subcontractor's equipment, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Subcontractor, the Contractor shall defend, indemnify and be liable to the Subcontractor as provided in Article 9 for any loss or damage (including bodily injury or death) which may arise from such use, except to the extent that such loss or damage is caused by the negligence of the Subcontractor's employees operating the Subcontractor's equipment.

## **ARTICLE 5 PROGRESS SCHEDULE**

- 5.1 TIME IS OF THE ESSENCE:** Time is of the essence for both parties. They mutually agree to see to the performance of their respective obligations so that the entire Project may be completed in accordance with the Subcontract Documents and particularly the Progress Schedule.
- 5.2 SCHEDULE OBLIGATIONS:** The Subcontractor shall provide the Contractor with any scheduling information proposed by the Subcontractor for the Subcontract Work. In consultation with the Subcontractor, the Contractor shall prepare the schedule for performance of the Work (the Progress Schedule) and shall revise and update such schedule, as necessary, as the Work progresses. Both the Contractor and the Subcontractor shall be bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to the Subcontractor promptly and reasonably in advance of the required performance. The Contractor shall have the right to determine and, if necessary, change the time, order and priority in which the various portions of the Work shall be performed and all other matters relative to the Subcontract Work.
- 5.3 DELAYS AND EXTENSIONS OF TIME**
- 5.3.1 OWNER-CAUSED DELAY:** Subject to Subparagraph 5.3.2, if the commencement and/or progress of the Subcontract Work is delayed without the fault or responsibility of the Subcontractor, the time for the Subcontract Work shall be extended by Subcontract Change Order, to the extent obtained by the Contractor under the Subcontract Documents, and the Progress Schedule shall be revised accordingly.
- 5.3.2 CLAIMS RELATING TO OWNER:** The Subcontractor agrees to initiate all claims for which the Owner is or may be liable in the manner and within the time limits provided in the Subcontract Documents, for like claims by the Contractor upon the Owner and in sufficient time for the Contractor to initiate such claims against the Owner in accordance with the Subcontract Documents. At the Subcontractor's request and expense, the Contractor agrees to permit the Subcontractor to prosecute a claim in the name of the Contractor for the use and benefit of the Subcontractor in the manner provided in the Subcontract Documents for like claims by the Contractor upon the Owner. The Subcontractor agrees



that the liability of the Contractor to the Subcontractor for any claim against the Owner under the Subcontractor Documents is liquidated and limited to whatever is paid by the Owner to the Contractor for the Subcontractor's claim(s), less whatever amount is included as mark-up in said claim for the Contractor. The Contractor shall have no obligation to pay the Subcontractor for any change, additional cost, or extra Work incurred by the Subcontractor, nor to extend the time for performance for any changes, additions, or deletions caused by the Owner or Architect/Engineer unless such price change or time extension is approved in writing by the Owner or its authorized representative. The Subcontractor further agrees that the remedy afforded herein with respect to disputes, which are properly the subject of claim(s) against the Owner, shall be the Subcontractor's sole and exclusive remedy with respect to said disputes.

### **5.3.3 CLAIMS RELATING TO CONTRACTOR**

**5.3.3.1** To the extent that the Subcontractor's claim or any part thereof is the responsibility of the Contractor, the Contractor's liability to the Subcontractor shall be limited, except to the extent prohibited by law, to the extension of the Subcontractor's completion date, and the Contractor shall not be liable to the Subcontractor for payment of damages or compensation of any kind because of any delay, acceleration, compression, inefficiencies, disruption, or hindrance, which is the subject matter of the Subcontractor's claim.

**5.3.3.2** The Subcontractor shall give the Contractor written notice of all claims not included in Subparagraph 5.3.2 within seven (7) days of the Subcontractor's knowledge of the facts giving rise to the event for which claim is made; otherwise, such claims shall be deemed waived. All unresolved claims, disputes and other matters in question between the Contractor and the Subcontractor not relating to claims included in Subparagraph 5.3.2, shall be resolved in the manner provided in Article 11.

**5.3.4 DAMAGES:** If the Subcontract Documents provide for liquidated or other damages for delay beyond the completion date set forth in the Subcontract Documents, and such damages are assessed, the Contractor may assess a share of the damages against the Subcontractor in proportion to the subcontractor's share of the responsibility for the delay. However, the amount of such assessment shall not exceed the amount assessed against the Contractor. This paragraph 5.3 shall not limit the Subcontractor's liability to the Contractor for the Contractor's actual delay damages caused by the Subcontractor's delay. Contractor's actual delay damages would include, but not be limited to, recovery of the Contractor's extra overhead and expenses related to managing or supervising the work, interest expense, equipment rental expense, attorneys' fees paid by Contractor under the Owner-Contractor Agreement, and any other costs incurred by the Contractor which in any way relate to the Subcontractor's failure to timely perform the Subcontract Work. Neither payment of such amounts nor commencement of legal action by the Contractor to establish the Subcontractor's liability to pay such amounts shall relieve the Subcontractor from its obligation to otherwise fully perform this Agreement.

## **5.4 WAIVERS OF CONSEQUENTIAL DAMAGES**

**5.4.1** To the extent the Owner-Contractor Agreement provides for a waiver of consequential damages by the Contractor, the Subcontractor waives claims against the Contractor for consequential damages arising out of or relating to this Agreement. To the extent the Owner-Contractor Agreement provides for a waiver of consequential damages by the Owner, the Contractor waives claims against the Subcontractor for consequential damages arising out of or relating to this Agreement. The Subcontractor shall obtain from its sub-subcontractor(s) waivers of consequential damages that correspond to the Subcontractor's waiver of consequential damages herein. Except as provided in Section 10.1.2, this waiver

applies to consequential damages due to termination by the Contractor or the Owner in accordance with this Agreement or the Owner-Contractor Agreement. To the extent the Owner-Contractor Agreement does not preclude the award of liquidated damages, nothing contained in this Paragraph 5.4 shall preclude the imposition of such damages, if applicable in accordance with the requirements of the Subcontract Documents.

**5.4.2** To the extent the Owner-Contractor Agreement provides for waivers of consequential damages between the Owner and the Contractor, damages for which the Contractor is liable to the Owner including those related to Subparagraph 9.1.1 are not consequential damages for the purpose of this waiver. Similarly, to the extent the Subcontractor-Sub-Subcontractor Agreement provides for waivers of consequential damages between the Owner and the Contractor, damages for which the Subcontractor is liable to lower-tiered parties due to the fault of the Owner or Contractor are not consequential damages for the purpose of this waiver.

## **ARTICLE 6 SUBCONTRACT AMOUNT**

As full compensation for performance of the Agreement, the Contractor agrees to pay the Subcontractor in current funds for the satisfactory performance of the Subcontract Work subject to all applicable provisions of the Subcontract Documents:

- (a) the fixed-price of [Attribute(Contract.NotToExceedAmount)] Dollars subject to additions and deductions as provided for in the Subcontract Documents; and/or
- (b) unit prices in accordance with the attached schedule of Unit Prices and estimated quantities, which is incorporated by reference and identified as Exhibit [Attribute(Contract.UnitPriceExhibit)]; and/or
- (c) time and material rates and prices in accordance with the attached Schedule of Labor and Material Costs which is incorporated by reference and identified as Exhibit [Attribute(Contract.TimeMaterialExhibit)].

## **ARTICLE 7 CHANGES IN THE SUBCONTRACT WORK**

**7.1 SUBCONTRACT CHANGE ORDER:** When the Contractor orders in writing, the Subcontractor, without nullifying this Agreement, shall make any and all changes in the Subcontract Work, which are within the general scope of the Agreement. Any adjustment in the Subcontract Amount or Subcontract Time shall be authorized by a Subcontract Change Order. No adjustments shall be made for any changes performed by the Subcontractor that have not been ordered by the Contractor. A Subcontract Change Order is a written instrument prepared by the Contractor and signed by the Subcontractor stating their agreement upon the change in the Subcontract Work.

**7.2 CONSTRUCTION CHANGE DIRECTIVES:** To the extent that the Subcontract Documents provide for Construction Change Directives in the absence of agreement on the terms of a Subcontract Change Order, the Subcontractor shall promptly comply with the Construction Change Directive and be entitled to apply for interim payment if the Subcontract Documents so provide.

**7.3 UNKNOWN CONDITIONS:** If, in the performance of the Subcontractor Work, the Subcontractor finds latent, concealed or subsurface physical conditions which differ materially from those indicated in the Subcontract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist,

and not generally recognized as inherent in the kind of work provided for in this Agreement, the Subcontract Amount and/or the Progress Schedule may be adjusted by a Subcontract Change Order within a reasonable time after the conditions are first observed. The adjustments the Subcontractor may receive, shall be limited by the adjustment the Contractor receives from the Owner on behalf of the Subcontractor, or as otherwise provided under Subparagraph 5.3.2.

**7.4 ADJUSTMENTS IN SUBCONTRACT AMOUNT:** If a Subcontract Change Order requires an adjustment in the Subcontract Amount, the adjustment shall be established by one of the following methods:

**7.4.1** mutual acceptance of an itemized lump sum;

**7.4.2** unit prices as indicated in the Subcontract Documents or as Subsequently agreed to by the parties; or

**7.4.3** costs determined in a manner acceptable to the parties and a mutually acceptable fixed or percentage fee; or

**7.4.4** another method provided in the Subcontract Documents.

**7.5 SUBSTANTIATION OF ADJUSTMENT:** If the Subcontractor does not respond promptly or disputes the method of adjustment, the method and the adjustment shall be determined by the Contractor on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Subcontract Amount, an allowance for overhead and profit of the percentage provided in Paragraph 7.6. The Subcontractor may contest the reasonableness of any adjustment determined by the Contractor. The Subcontractor shall maintain for the Contractor's review and approval an appropriately itemized and substantiated accounting of the following items attributable to the Subcontract Change Order:

**7.5.1** labor costs, including social security, health, welfare, retirement and other fringe benefits as normally required, and state workers' compensation insurance;

**7.5.2** costs of materials supplies and equipment, whether incorporated in the Subcontract Work or consumed, including transportation costs;

**7.5.3** costs of renting machinery and equipment other than hand tools;

**7.5.4** costs of bond and insurance premiums, permit fees and taxes attributable to the change; and

**7.5.5** costs of additional supervision and field office personnel services necessitated by the change.

**7.6 ADJUSTMENTS:** Adjustments shall be based on net change in Subcontractor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase in cost, an agreed upon sum for overhead and profit not to exceed the amount permitted under the Owner-Contractor Agreement.

**7.7 NO OBLIGATION TO PERFORM:** The Subcontractor shall not perform changes in the Subcontract Work until a Subcontract Change Order has been executed or written instructions have been issued in accordance with Paragraphs 7.2 and 7.9.

**7.8 EMERGENCIES:** In an emergency affecting the safety of persons and/or property, the Subcontractor shall act, at its discretion, to prevent threatened damage, injury or loss, and

shall provide immediate verbal notice to Contractor's representative followed by prompt written notice. Any change in the Subcontract Amount and/or the Progress Schedule on account of emergency work shall be determined as provided in this Article.

**7.9 INCIDENTAL CHANGES:** The Contractor may direct the Subcontractor to perform incidental changes in the Subcontract Work which do not involve adjustments in the Subcontract Amount or Subcontract Time. Incidental changes shall be consistent with the scope and intent of the Subcontract Documents. The Contractor shall initiate an incidental change in the Subcontract Work by issuing a written order to the Subcontractor. Such written notice shall be carried out promptly and is binding on the parties.

## **ARTICLE 8 PAYMENT**

**8.1 SCHEDULE OF VALUES:** As a condition to payment, the Subcontractor shall provide a schedule of values satisfactory to the Contractor not more than ten (10) days from the date of execution of this Agreement. The schedule of values shall list items for labor, services, and significant material items. Items should be listed in a manner to prevent any single items from exceeding \$250,000 in value.

### **8.2 PROGRESS PAYMENTS**

**8.2.1 APPLICATIONS:** Applications for payment shall be submitted to PO Box 350, Columbus, KS 66725 and emailed to [ProjectProjectManager.EmailAddress]. Subcontractor's applications for payment shall be itemized and supported by substantiating data as required by the Subcontract Documents. If the Subcontractor is obligated to provide design services pursuant to Paragraph 3.8, the Subcontractor's applications for payment shall show the Designer's fee and expenses as a separate cost item. The Subcontractor's applications shall be notarized and if allowed under the Subcontract Documents, may include properly authorized Subcontract Construction Change Directives. The Subcontractor's progress payment application for the Subcontract Work performed in the preceding payment period shall be submitted for approval of the Contractor in accordance with the schedule of values if required in Subparagraphs 8.2.2, 8.2.3, and 8.2.4. The Contractor shall incorporate the approved amount of the Subcontractor's progress payment application into the Contractor's payment application to the Owner for the same period and submit it to the Owner in a timely fashion. The Contractor shall immediately notify the Subcontractor of any changes in the amount requested on behalf of the Subcontractor.

**8.2.2 RETAINAGE:** The rate of retainage shall be [Number(Source=Attribute,Path=(Contract.WorkRetainageRate,Format="F2"))]% which is equal to the percentage retained from the Contractor's payment by the Owner for the Subcontract Work. If the Subcontract Work is satisfactory and the Subcontract Documents provide for reduction of retainage at a specified percentage of completion, the Subcontractor's retainage shall also be reduced when the Subcontract Work has attained the same percentage of completion and the Contractor's retainage for the Subcontract Work has been so reduced by the Owner.

**8.2.3 TIME OF APPLICATION:** The Subcontractor shall submit progress payment applications to the Contractor no later than the [Attribute(Contract.PayAppDue)] day of each payment period for the Subcontract Work performed up to and including the [Attribute(Contract.PayAppDue)] day of the payment period indicating Work completed and, to the extent allowed under Subparagraph 8.2.4, materials suitably stored during the preceding payment period.

**8.2.4 STORED MATERIALS:** Unless otherwise provided in the Subcontract Documents, and if approved in advance by the Owner, applications for payment may include materials

and equipment not incorporated in the Subcontract Work but delivered to and suitably stored at the site or at some other location agreed upon in writing. Approval of payment applications of such stored items on or off the site, shall be conditioned upon submission by the Subcontractor of bills of sale and applicable insurance or other procedures satisfactory to the Owner and Contractor to establish the Owner's title to such materials and equipment, or otherwise to protect the Owner's and Contractor's interest including transportation to the site.

**8.2.5 TIME OF PAYMENT:** Receipt of payment by the Contractor from the Owner for the Subcontract Work is a condition precedent to payment by the Contractor or payment by Contractor's surety under the payment bond to the Subcontractor. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Contractor, for payment of Subcontract Work. Progress payments received from the Owner for the Subcontractor for satisfactory performance of the Subcontract Work shall be made no later than ten (10) days after receipt of the Contractor, of payment from the Owner for the Subcontract Work.

**8.2.6 PAYMENT DELAY:** If the Contractor has received payment from the Owner and if for any reason not the fault of the Subcontractor, the Subcontractor does not receive a progress payment from the Contractor within ten (10) days after the date such payment is due, as defined in Subparagraph 8.2.5, the Subcontractor, upon giving ten (10) days written notice to the Contractor, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to the Subcontractor has been received. The Subcontract Amount and Time shall be adjusted by the amount of the Subcontractor's reasonable and verified cost of shutdown, delay, and startup, which shall be effected by an appropriate Subcontractor Change Order.

**8.2.7 PAYMENTS WITHHELD:** The Contractor may reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, or withhold payment to the Subcontractor, as may be reasonably necessary to protect the Contractor from loss or damage based upon:

**8.2.7.1** the Subcontractor's failure to timely provide required bonds or maintain required insurance coverages, including providing satisfactory documentation of the same;

**8.2.7.2** the Subcontractor's repeated failure to perform the Subcontract Work as required by this Agreement;

**8.2.7.3** loss or damage arising out of or relating to this Agreement and caused by the Subcontractor to the Owner, Contractor or others to whom the Contractor may be liable;

**8.2.7.4** the Subcontractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with the Subcontract Work;

**8.2.7.5** rejected, nonconforming or defective Subcontract Work which has not been corrected in accordance with paragraph 3.22 of this Agreement;

**8.2.7.6** reasonable evidence of delay in performance of the Subcontract Work, or that the unpaid balance of the Subcontract Amount is not sufficient to offset the liquidated damages or actual damages that may be sustained by the Contractor as a result of the anticipated delay caused by the Subcontractor;

**8.2.7.7** reasonable evidence demonstrating that the unpaid balance of the Subcontract Amount is insufficient to cover the cost to complete the Subcontract Work;

**8.2.7.8** third party claims involving the Subcontractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Subcontractor furnishes the Contractor with adequate security in the form of a surety bond, letter of credit or other collateral or commitment which are sufficient to discharge such claims, if established.

**8.2.7.9** the Subcontractor's repeated failure to update as-built records in accordance with paragraph 3.9 of this Agreement;

**8.2.7.10** failure to timely satisfy the required closeout procedures in accordance with paragraphs 3.13, 3.22, and 3.29 of this agreement.

### **8.3 FINAL PAYMENT**

**8.3.1 APPLICATION:** Upon acceptance of the Subcontract Work by the Owner and the Contractor, and receipt from the Subcontractor of evidence of fulfillment of the Subcontractor's obligations in accordance with the Subcontract Documents and Subparagraph 8.3.2, the Contractor shall incorporate the Subcontractor's application for final payment into the Contractor's next application for payment to the Owner without delay, or notify the Subcontractor if there is a delay, and the reason therefore.

**8.3.2 REQUIREMENTS:** Before the Contractor shall be required to incorporate the Subcontractor's application for final payment into the Contractor's next application for payment, the Subcontractor shall submit to the Contractor:

**8.3.2.1** an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontract Work for which the Owner or its property or the Contractor or the Contractor's surety might in any way be liable, have been paid or otherwise satisfied;

**8.3.2.2** consent of surety to final payment, if required;

**8.3.2.3** satisfaction of required closeout procedures;

**8.3.2.4** certification that insurance required by the Subcontract Documents to remain in effect beyond final payment pursuant to Clauses 9.2.3.1 and 9.2.7 is in effect and will not be cancelled or allowed to expire without at least thirty (30) days written notice to the Contractor, unless a longer period is stipulated in this Agreement;

**8.3.2.5** other data, if required by the Contractor or Owner, such as receipts, releases, and waivers of lien, to the extent and in such form, as may be designated by the Contractor or Owner;

**8.3.2.6** written warranties, equipment manuals, startup and testing required in Paragraph 3.28; and

**8.3.2.7** as-built drawings, if required by the Subcontract Documents.

**8.3.3 TIME OF PAYMENT:** Receipt of final payment by the Contractor from the Owner for the Subcontract Work is a condition precedent to final payment by the Contractor to the Subcontractor. The Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Contractor, for payment of Subcontract Work. Final payment for the Subcontract Work shall be made to the Subcontractor:

**8.3.3.1** upon receipt of the Owner's waiver of all claims related to the Subcontract



Work except for unsettled liens, unknown defective work, and non-compliance with the Subcontract Documents or Warranties; and

**8.3.3.2** within ten (10) days after receipt by the Contactor of final payment from the Owner for such Subcontract Work.

**8.3.4 FINAL PAYMENT DELAY:** If the Owner or its designated agent does not issue a certificate for final payment or the Contractor does not receive such payment for any cause which is not the fault of the Subcontractor, the Contractor shall promptly inform the Subcontractor in writing. The Contractor shall also diligently pursue, with the assistance of the Subcontractor, the prompt release by the Owner, of the final payment due for the Subcontract Work. At the Subcontractor's request and expense, to the extent agreed upon in writing, the Contractor shall institute reasonable legal remedies to mitigate the damages and pursue payment of the Subcontractor's final payment including interest.

**8.3.5 WAIVER OF CLAIMS:** Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontract Work, but shall in no way relieve the Subcontractor of liability for the obligations assumed under Paragraphs 3.21 and 3.22, or for faulty or defective Work or services discovered after final payment.

**8.4 LATE PAYMENT INTEREST:** Progress payments or final payment due and unpaid under this Agreement, as defined in Subparagraphs 8.2.5, 8.3.3, and 8.3.4, shall accrue interest at the legal rate prevailing from time to time at the place where the Project is located.

**8.5 CONTINUING OBLIGATIONS:** Provided the Contractor is making payments on, or has made payments to the Subcontractor in accordance with the terms of this Agreement, the Subcontractor shall reimburse the Contractor for any costs and expenses for any claim, obligation or lien asserted before or after final payment is made that arises from the performance of the Subcontract Work. The Subcontractor shall reimburse the Contractor for costs and expenses including attorneys' fees and costs and expenses incurred by the Contractor in satisfying, discharging or defending against any such claims, obligation or lien including any action brought or judgment recorded. In the event that any applicable law, statute, regulation or bond requires the Subcontractor to take any action prior to the expiration of the reasonable time for payment referenced in Subparagraph 8.2.5 in order to preserve or protect the Subcontractor's rights, if any, with respect to mechanic's lien or bond claims, then the Subcontractor may take that action prior to the expiration of the reasonable time for payment. Provided that such actions are taken only at the time and to the extent reasonably necessary to prevent the loss of rights, such actions will not create the reimbursement obligation recited above, nor be in violation of the Agreement, or considered premature for purposes of preserving and protecting the Subcontractor's right.

**8.6 PAYMENT USE RESTRICTION:** Payments received by the Subcontractor shall be used to satisfy the indebtedness owed by the Subcontractor to any person furnishing labor or materials, or both, for use in performing the Subcontract Work through the most current period applicable to progress payments received from the Contractor before it is used for any other purpose. Subcontractor agrees progress payments received are held in trust for its subcontractors and/or suppliers of labor and/or materials for work. This provision shall bear on this Agreement only, and is not for the benefit of third parties. Moreover, it shall not be construed by the parties to this Agreement or third parties to require that dedicated sums of money or payments be deposited in separate accounts, or that there be other dedicated sums of money or payments be deposited in separate accounts, or that there be other restrictions on commingling of funds. In no event shall this provision be construed to create a fiduciary duty on the part of the Contractor, or create any tort cause of action or liability for breach of trust, punitive damages, or other equitable remedy or liability for alleged breach on the part of the Contractor.



- 8.7 PAYMENT USE VERIFICATION:** If the Contractor has reason to believe that the Subcontractor is not complying with the payment terms of this Agreement, the Contractor shall have the right to contact the Subcontractor's subcontractors and suppliers to ascertain whether they are being paid by the Subcontractor in accordance with this Agreement.
- 8.8 PARTIAL LIEN WAIVERS AND AFFIDAVITS:** As a prerequisite for payments, the Subcontractor shall provide, in a form satisfactory to the Owner and Contractor, partial lien and claim waivers in the amount of the application for payment and affidavits covering its subcontractors and suppliers for completed Subcontract Work. Such waivers may be conditional upon payment. In no event shall the Contractor require the Subcontractor to provide an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.
- 8.9 SUBCONTRACTOR PAYMENT FAILURE:** Upon payment by the Contractor, the Subcontractor shall promptly pay its subcontractors and suppliers the amounts to which they are entitled. In the event the Contractor has reason to believe that labor, material or other obligations incurred in the performance of the Subcontract Work are not being paid, the Contractor may give written notice of a potential claim or lien to the Subcontractor and may take any steps deemed necessary to assure that progress payments are utilized to pay such obligations, including but not limited to, the issuance of joint checks. If upon receipt of notice, the Subcontractor does not (a) supply evidence to the satisfaction of the Contractor that the moneys owing have been paid; or (b) post a bond indemnifying the Owner, the Contractor, the Contractor's surety, if any, and the premises from a claim or lien, the Contractor shall have the right to withhold from any payments due or to become due to the Subcontractor a reasonable amount to protect the Contractor from any and all loss, damage or expense including attorneys' fees that may arise out of, or relate to any such claim or lien. In addition to its right to terminate this Agreement for default arising from the Subcontractor's failure to promptly pay its subcontractors and suppliers as set forth herein, the Contractor shall have the right to pay any past due obligations of the Subcontractor which arise out of the Subcontractor's performance of this Agreement, either by check made payable directly to any of the Subcontractor's creditors asserting a claim, or by check made payable jointly to the Subcontractor and any of the Subcontractor's creditors asserting a claim. All such payments shall apply as payment against any amount that the Contractor may otherwise owe the Subcontractor pursuant to this Agreement. This provision shall bear on this Agreement only, and is not for the benefit of third parties. In no event shall this provision be construed to create a duty on Contractor to pay Subcontractor's creditors.
- 8.10 SUBCONTRACTOR ASSIGNMENT OF PAYMENTS:** The Subcontractor shall not assign any moneys due or to become due under this Agreement, without the written consent of the Contractor, unless the assignment is intended to create a new security interest within the scope of Article 9 of the Uniform Commercial Code. Should the Subcontractor assign all or any part of any moneys due or to become due under this Agreement to create a new security interest or for any other purpose, the instrument of assignment shall contain a clause to the effect that the assignee's right in and to any money due or to become due to the Subcontractor shall be subject to the claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Subcontract Work.
- 8.11 PAYMENT NOT ACCEPTANCE:** Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Subcontract Work.

## **ARTICLE 9 INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION**

### **9.1 INDEMNITY**

**9.1.1 INDEMNITY:** To the fullest extent permitted by law, the Subcontractor shall defend,

indemnify and hold harmless the Contractor, the Contractor's other subcontractors, the Architect/Engineer, the Owner and their agents, consultants and employees (the Indemnities) from all claims that may arise out of this Agreement, the Work, any breach, violation or default by contractor or its employees, agents, representatives, Subcontractors, or Sub subcontractors, or any employees, agents, representatives or contractors of any foregoing, of contractors obligations under the contract documents including, without limitation, any violation of any law, statute, ordinance, order, rule or regulation, including, without limitation, personal injury, property damage, any Environmental Law and the Storm Water Requirements. To the extent any part of this provision conflicts with or is in violation of applicable state law, the provision shall be revised as follows: To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless the Contractor, the Contractor's other subcontractors, the Architect/Engineer, the Owner and their agents, consultants and employees (the Indemnities) from all claims that may arise from any breach, violation or default by Subcontractor or its employees, agents, representatives, subcontractors, suppliers, or sub- subcontractors or any employees, agents, representatives or contractors of any foregoing, including, without limitation, any violation of any law, statute, ordinance, order, rule or regulation, including, without limitation, any Environmental Law and the Storm Water Requirements. Subcontractor's foregoing obligations shall be applicable even in the event of any alleged or actual Indemnitee negligence, but Subcontractor shall not be responsible to indemnify for any amounts held to be attributable to the negligence of such Indemnitees and/or any amounts prohibited by applicable state law.

**9.1.2 NO LIMITATION ON LIABILITY:** In any and all claims against the Indemnities by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

**9.1.3 SAVINGS CLAUSE:** If this Agreement or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the Subcontractor shall nevertheless indemnify the Indemnitees as to Expenses, judgments, fines, penalties, and amounts paid in settlement with respect to any Proceeding to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated and to the fullest extent permitted by applicable law.

## **9.2 INSURANCE**

**9.2.1 SUBCONTRACTOR'S INSURANCE:** Before commencing the Subcontract Work, and as a condition of payment, the Subcontractor shall purchase and maintain insurance that will protect it from the claims arising out of its operations under this Agreement, whether the operations are by the Subcontractor, or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. These insurance requirements and the Subcontractor indemnification obligations under this Agreement shall also apply to anyone hired by Subcontractor to work under this Agreement.

**9.2.2 MINIMUM LIMITS OF LIABILITY:** The subcontractor shall maintain insurance policies in a company satisfactory to the Contractor. The insurance policies shall have the limits of liability (at a minimum) and contain the terms and conditions set forth in Exhibit 9.2.2.1.

**9.2.3 PROFESSIONAL LIABILITY INSURANCE:** The subcontractor shall maintain and shall require the Designer(s) to maintain Project Specific Professional Liability Insurance with a company satisfactory to the Contractor. The insurance policies shall have the limits of liability (at a minimum) and contain the terms and conditions set forth in Exhibit 9.2.2.1.

**9.2.4 NUMBER OF POLICIES:** Commercial General Liability Insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.

**9.2.5 CANCELLATION, RENEWAL AND MODIFICATION:** The Subcontractor shall maintain in effect, all insurance coverage required under this Agreement at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor. To the extent commercially available, the policies shall contain a provision that coverage will not be cancelled or not renewed until at least thirty (30) days prior written notice has been given to the Contractor. If not commercially available, Subcontractor shall be responsible for providing notice of cancellation to Contractor. Certificates of insurance showing required coverage to be in force pursuant to Subparagraph 9.2.2 shall be filed with the Contractor's Certificate Compliance System prior to commencement of the Subcontract Work. In the event the Subcontractor fails to obtain or maintain any insurance coverage required under this Agreement, the Contractor may purchase such coverage as desired for the Contractor's benefit and charge the expense to the Subcontractor, or terminate this Agreement.

**9.2.6 CERTIFICATES OF INSURANCE:** The Subcontractor shall furnish certificates of insurance on ACORD forms provided by the Subcontractor's Insurance Carrier showing that the insurance is in force, stating policy numbers, dates of expiration, limits of liability and coverages thereunder. The act of furnishing certificates of insurance does not, in any way, obligate Contractor or its agents to approve, evaluate or notify Subcontractor of Subcontractor's compliance or non-compliance with terms and conditions as set forth in this Section 9.2 or Exhibit 9.2.2.1. In no way shall receipt of certificate of insurance negate, reduce, limit or waive Contractor's right to enforce the terms and conditions of this Section 9.2 or Exhibit 9.2.2.1. Certificates of insurance must be successfully submitted to the Contractor's Certificate Compliance System prior to commencement of Subcontract Work.

Certificate of Insurance completed with Certificate Holder listed as:

Crossland Heavy Contractors, Inc.  
c/o IMA Certificate Compliance  
1705 17th Street, Suite 200  
Denver, CO 80202

Subcontractor must register with Contractor's Certificate Compliance System. Subcontractor will receive a registration e-mail from [certificatecompliance@imacorp.com](mailto:certificatecompliance@imacorp.com) and must follow the instructions in the e-mail to complete registration with IMA Certificate Compliance. Subcontractor's insurance broker/agent shall then be required to upload a certificate on Subcontractor's behalf. Only certificates emailed directly from insurance brokers/agents will be accepted. Certificates received through the U.S. Postal Service will not be accepted. If Subcontractor's insurance broker/agent has questions or needs clarification, he or she may contact Contractor's broker directly at 303-615-7994 or via e-mail at [certificatecompliance@imacorp.com](mailto:certificatecompliance@imacorp.com).

**9.2.7 CONTINUATION OF COVERAGE:** The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least two (2) years after either ninety (90) days following Substantial Completion of the Work, or final payment to the Contractor, whichever is earlier. The Subcontractor shall furnish the Contractor evidence of such insurance at final payment, and one year from final payment.

#### **9.2.8 BUILDER'S RISK INSURANCE**

**9.2.8.1** Upon written request of the Subcontractor, the Contractor shall provide the Subcontractor with a copy of the Builder's Risk policy of insurance or any other

property or equipment insurance in force for the Project and procured by the Owner or Contractor. The Contractor will advise the Subcontractor if a Builder's Risk policy of insurance is not in force.

**9.2.8.2** If the Owner or Contractor has not purchased Builder's Risk insurance satisfactory to the Subcontractor, the Subcontractor may procure such insurance as will protect the interests of the Subcontractor, its subcontractors and their subcontractors in the Subcontract Work.

**9.2.8.3** If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Subcontract Documents, the Subcontractor shall procure and maintain at the Subcontractor's own expense, property and equipment insurance for the Subcontract Work including portions of the Subcontract Work stored off the site or in transit, when such portions of the Subcontract Work are to be included in an application for payment under Article 8.

**9.2.9 WAIVER OF SUBROGATION:** The Contractor and Subcontractor waive all rights against each other, the Owner, the Architect/Engineer, and any of their respective consultants, subcontractors, and sub-subcontractors, agents and employees, for damages caused by perils, to the extent covered by the proceeds of the insurance provided in Clause 9.2.8.1, except such rights as they may have to the insurance proceeds. The Subcontractor shall require similar waivers from its subcontractors.

**9.2.10 ENDORSEMENT:** If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

## **ARTICLE 10 CONTRACTOR'S RIGHT TO PERFORM SUBCONTRACTOR'S RESPONSIBILITIES AND TERMINATION OF AGREEMENT**

### **10.1 FAILURE OF PERFORMANCE**

**10.1.1 NOTICE TO CURE:** If the Subcontractor refuses or fails to supply enough properly skilled workers, proper materials, or maintain the Progress Schedule, or fails to make prompt payment to its workers, subcontractors or suppliers, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of a provision of this Agreement, the Subcontractor shall be deemed in default of this Agreement. If the Subcontractor fails within three (3) days after written notification, to provide the Contractor a written plan setting forth the steps it intends to take to cure the default and to commence and continue satisfactory correction of the default with diligence and promptness, then the Contractor without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

**10.1.1.1** supply workers, materials, equipment and facilities as the Contractor deems necessary for the completion of the Subcontract Work or any part which the Subcontractor has failed to complete or perform after written notification, and charge the cost, including reasonable overhead, profit, attorneys' fees, costs and expenses to the Subcontractor;

**10.1.1.2** contract with one or more additional contractors to perform such part of the Subcontract Work as the Contractor determines will provide the most expeditious completion of the Work, and charge the cost to the Subcontractor as provided under Clause 10.1.1.1; and/or

**10.1.1.3** withhold any payment due or to become due the Subcontractor pending

corrective action in amounts sufficient to cover losses and compel performance to the extent required by and to the satisfaction of the Contractor.

In the event of any emergency affecting the safety of persons or property, the Contractor may proceed as above without notice, but the Contractor shall give the Subcontractor notice promptly after the fact as a precondition of cost recovery.

**10.1.2 TERMINATION BY CONTRACTOR FOR DEFAULT:** If the Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) days after written notification issued under Subparagraph 10.1.1, then the Contractor may, in lieu of or in addition to Subparagraph 10.1.1, issue a second written notification to the Subcontractor and its surety, if any. Such notice shall state that if the Subcontractor fails to commence and continue correction of a default within seven (7) days of the written notification, the Agreement will be deemed terminated. A written notice of termination shall be issued by the Contractor to the Subcontractor at the time the Agreement is terminated. The Contractor may furnish those materials, equipment and/or employ such workers or subcontractors as the Contractor deems necessary to maintain the orderly progress of the Work. All costs incurred by the Contractor in performing the Subcontract Work, including reasonable overhead, profit and attorneys' fees, costs and expenses, shall be deducted from any moneys due or to become due the Subcontractor. The Subcontractor shall be liable for the Payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. At the Subcontractor's request, the Contractor shall provide a detailed accounting of the costs to finish the Subcontract Work.

**10.1.3 TERMINATION BY CONTRACTOR FOR CONVENIENCE:** The Contractor shall have the right to terminate for convenience this entire Subcontract or any portion thereof, at any time, and for any reason, upon written notice to the Subcontractor specifying the extent to which this Subcontract is terminated, and the date upon which such termination becomes effective. After receipt of the Contractor's Notice of Termination for Convenience, the Subcontractor agrees to (1) stop work on the Subcontract Work or any portion thereof on the date to the extend specified, (2) place no further orders or subcontract for materials, services or facilities except as may be necessary for completion of that portion of Work that is not terminated, (3) transfer title and deliver to the Contractor any materials, work in process, completed work and supplies for which the Subcontractor has been paid, and (4) complete performance of any part of the Work required by this Subcontract that is not terminated by the Contractor's Notice of Termination for Convenience. In the event the Owner-Contractor Agreement is terminated in whole or in part, for any reason whatsoever, including default termination by either the Owner or the Contractor, the Contractor shall only be liable to the Subcontractor for whatever amount the Owner pays the Contractor for Work performed by the Subcontractor. If the Contractor terminates this Subcontract for its convenience either in whole or in part but the Owner-Contractor Agreement is not similarly terminated, the Contractor's liability to the Subcontractor for any convenience termination shall be limited to that amount equal to the percentage of Work properly completed by the Subcontractor less any amounts previously paid the Subcontractor and less any expenses incurred by the Contractor arising from or related to the Subcontractor's performance. The Subcontractor expressly agrees that as a condition precedent to receiving any funds from the Contractor for the convenience termination of the Owner, the Contractor shall have received payment for said Work from the Owner. In no event shall the Contractor be liable for the loss of anticipated profits or consequential damages arising from the convenience termination.

**10.1.4 USE OF SUBCONTRACTOR'S EQUIPMENT:** If the Contractor performs Work under this Article, either directly or through other subcontractors, the Contractor or other subcontractors shall have the right to take and use any materials, implements, equipment, appliances or tools furnished by, or belonging to the Subcontractor and located at the Project site for the purpose of completing any remaining Subcontract Work. Immediately



upon completion of the Subcontract Work, any remaining materials, implements, equipment, appliances or tools not consumed or incorporated in performance of the Subcontract Work, and furnished by, belonging to, or delivered to the Project by or on behalf of the Subcontractor, shall be returned to the Subcontractor in substantially the same condition as when they were taken, normal wear and tear excepted.

## **10.2 BANKRUPTCY**

**10.2.1 TERMINATION ABSENT CURE:** If the Subcontractor files a petition under the Bankruptcy Code, this Agreement shall terminate if the Subcontractor or the Subcontractor's trustee rejects the Agreement or, if there has been a default, the Subcontractor is unable to give adequate assurance that the Subcontractor will perform as required by the Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

**10.2.2 INTERIM REMEDIES:** If the Subcontractor is not performing in accordance with the Progress Schedule at the time a petition in bankruptcy is filed, or at any subsequent time, the Contractor, while awaiting the decision of the Subcontractor or its trustee to reject or to assume this Agreement and provide adequate assurance of its ability to perform, may avail itself of such remedies under this Article as are reasonably necessary to maintain the Progress Schedule. The Contractor may offset against any sums due or to become due the Subcontractor all costs incurred in pursuing any of the remedies provided including, but not limited to, reasonable overhead, profit and attorneys' fees. The Subcontractor shall be liable for the payment of any amount by which costs incurred may exceed the unpaid balance of the Subcontract Price.

**10.3 SUSPENSION BY OWNER:** Should the Owner suspend the Work or any part which includes the Subcontract Work and such suspension is not due to any act or omission of the Contractor, or any other person or entity for whose acts or omissions the Contractor may be liable, the Contractor shall notify the Subcontractor in writing and upon receiving notification the Subcontractor shall immediately suspend the Subcontract Work. In the event of Owner suspension, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor.

**10.4 TERMINATION BY OWNER:** Should the Owner terminate its contract with the Contractor or any part which includes the Subcontract Work, the Contractor shall notify the Subcontractor in writing, within three (3) days of the termination, and upon written notification, the Agreement shall be terminated and the Subcontractor shall immediately stop the Subcontract Work, follow all of the Contractor's instructions, and mitigate all costs. In the event of Owner termination, the Contractor's liability to the Subcontractor shall be limited to the extent of the Contractor's recovery on the Subcontractor's behalf under the Subcontract Documents. The Contractor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of the Owner termination and to permit the Subcontractor to prosecute the claim, in the name of the Contractor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor.

**10.5 CONTINGENT ASSIGNMENT OF THIS AGREEMENT:** The Contractor's contingent assignment of this Agreement to the Owner, as provided in the Owner-Contractor Agreement, is effective when the Owner has terminated the Owner-Contractor Agreement for cause, and has accepted the assignment by notifying the Subcontractor in writing. This contingent assignment is subject to the prior rights of a surety that may be obligated under

the Contractor's bond, if any. Subcontractor consents to such assignment and agrees to be bound to the assignee by the terms of this Agreement, provided that the assignee fulfills the obligations of the Contractor.

**10.6 SUSPENSION BY CONTRACTOR:** The Contractor may order the Subcontractor in writing to suspend all or any part of the Subcontract Work for such period of time as may be determined to be appropriate for the convenience of the Contractor. Phased Work or interruptions of the Subcontract Work for short periods of time shall not be considered a suspension. The Subcontractor, after receipt of the Contractor's order, shall notify the Contractor in writing in sufficient time to permit the Contractor to provide timely notice to the Owner in accordance with the Owner-Contractor Agreement of the effect of such order upon the Subcontract Work. The Subcontract Amount or Progress Schedule, shall be adjusted by Subcontract Change Order, for any increase in the time or cost of performance of this Agreement caused by such suspension. No claim under this Paragraph shall be allowed by any costs incurred more than fourteen (14) days prior to the Subcontractor's notice to the Contractor. Neither the Subcontract Amount nor the Progress Schedule shall be adjusted for any suspension, to the extent that performance would have been suspended, due in whole or in part to the fault or negligence of the Subcontractor or by a cause for which the Subcontractor would have been responsible. The Subcontract Amount shall not be adjusted for any suspension to the extent that performance would have been suspended by a cause for which the Subcontractor would have been entitled only to a time extension under this Agreement.

**10.7 WRONGFUL EXERCISE:** If the Contractor wrongfully exercises any option under this Article, the Contractor shall be liable to the Subcontractor solely for the reasonable value of Subcontract Work performed by the Subcontractor prior to the Contractor's wrongful action, including reasonable overhead and profit on the Subcontract Work performed, less prior payments made.

**10.8 TERMINATION BY SUBCONTRACTOR:** If the Subcontract Work has been stopped for thirty (30) days because the subcontractor has not received progress payments that are due or has been abandoned or suspended for an unreasonable period of time not due to the fault of neglect of the Subcontractor, then the Subcontractor may terminate this Agreement upon giving the Contractor seven (7) days' written notice. Upon such termination, Subcontractor shall be entitled to recover from the Contractor payment for all Subcontract Work satisfactorily performed for which the Owner has paid the Contractor. The Contractor's liability for any other damages claimed by the Subcontractor under such circumstances shall be extinguished by the Contractor pursuing said damages and claims against the Owner, on the Subcontractor's behalf, in the manner provided for in Subparagraphs 10.3 and 10.4 of this Agreement.

## **ARTICLE 11 DISPUTE RESOLUTION**

**11.1 INITIAL DISPUTE RESOLUTION:** If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be resolved through direct discussions, the parties shall participate in mediation under the Construction Industry Mediation Rules of the American Arbitration Association before recourse to any other form of binding dispute resolution. The location of the Mediation shall be the location of the Project. Once a party files a request for mediation with the other party, and with the American Arbitration Association, the parties agree to commence such mediation within thirty (30) days of filing of the request. Either party may terminate the mediation at any time after the first session, but the written notice of the decision to terminate must be delivered in person to the other party and the mediator. Engaging in mediation is a condition precedent to any other form of finding dispute resolution.



- 11.2 WORK CONTINUATION AND PAYMENT:** Unless otherwise agreed in writing, the Subcontractor shall continue the Subcontract Work and maintain the Progress Schedule during any dispute resolution proceedings. If the Subcontractor continues to perform, the Contractor shall continue to make payments in accordance with this Agreement.
- 11.3 NO LIMITATION OF RIGHTS OR REMEDIES:** Nothing in this Article shall limit any rights or remedies not expressly waived by the Subcontractor which the Subcontractor may have under lien laws of payment bonds. However, in the event the parties agree to arbitrate the dispute, they also agree that they will not oppose a motion to stay any civil action to enforce a lien until resolution of the arbitration, which resolution will be binding on the parties with regard to the lien action.
- 11.4 MULTIPARTY PROCEEDING:** The parties agree that to the extent permitted by Subcontract Documents, all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. To the extent disputes between the Contractor and Subcontractor involve, in whole or in part, disputes between the Contractor and the Owner, disputes between the Subcontractor and the Contractor shall be decided by the same tribunal and in the same forum as disputes between the Contractor and the Owner.
- 11.5 DISPUTES BETWEEN CONTRACTOR AND SUBCONTRACTOR:** In the event that the provisions for resolution of disputes between the Contractor and the Owner contained in the Subcontract Documents do not permit consolidation of joinder with disputes of third parties, such as the Subcontractor, resolution of disputes between the Subcontractor and the Contractor involving, in whole or in part, disputes between the Contractor and the Owner shall be stayed pending conclusion of any dispute resolution proceeding between the Contractor and the Owner. At the conclusion of those proceedings, disputes between the Subcontractor and the Contractor shall be submitted again to mediation pursuant to Paragraph 11.1. Any disputes not resolved by mediation shall be decided in the manner selected in the Agreement between the Owner and the Contractor.
- 11.6 COST OF DISPUTE RESOLUTION:** The cost of any mediation proceeding shall be shared equally by the parties participating. Except where attorneys' fees are specifically provided for in this Agreement, in any dispute arising out of or relating to this Agreement or its breach, each party shall pay its own attorneys' fees, costs and expenses. Notwithstanding Sections 2.3 and 3.1, this Section 11.6 shall control despite any differing provision in the Owner-Contractor Agreement.

## **ARTICLE 12 MISCELLANEOUS PROVISIONS**

- 12.1 GOVERNING LAW:** This Agreement shall be governed by the laws of the state where the Project is located, unless the Owner-Contractor Agreement provides otherwise. All disputes under or arising out of this Agreement are subject to the exclusive jurisdiction and venue of the District Court of Cherokee County, Kansas. However, to the extent that the provisions of the Owner-Contractor Agreement are incorporated herein, said provisions will be governed by the laws of the state as provided in the Owner-Contractor Agreement.
- 12.2 SEVERABILITY:** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.
- 12.3 NO WAIVER OF PERFORMANCE:** The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of any term, covenant, condition or right with respect to further performance.

**12.4 TITLES:** The titles given to the Articles of this Agreement are for ease of reference only, and shall not be relied upon or cited for any other purpose.

**12.5 OTHER PROVISIONS AND DOCUMENTS:** Other provisions and documents applicable to the Subcontract Work are set forth in Exhibit N/A.

**12.6 JOINT DRAFTING:** The parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

### **ARTICLE 13 EXISTING SUBCONTRACT DOCUMENT**

As defined in Paragraph 2.3, the following Inclusions/Exclusions are a part of this Agreement:

[StartTable(Name=Addenda,Source=Attribute,Path=Contract.ContractAddenda,Sort=Number,RowsInHeader=1)]

<b>Addenda</b>	
[Attribute(ContractAddenda.Item)]	[Attribute(ContractAddenda.Description)]

[EndTable]

<b>Exhibits</b>	
9.2.2.1	Insurance Minimum Requirements
Trade Contract Attachment "A"	Safety Requirements and Site Policies

[StartTable(Name=Exhibits,Source=Attribute,Path=Contract.Exhibits,Sort=Number,RowsInHeader=0)]

[Attribute(Exhibits.Number)]	[Attribute(Exhibits.Description)]
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[EndTable]

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<b>Alternates</b>	
[Attribute(Alternates.Number)]	[Attribute(Description)]

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[StartTable(Name=ECTable1,Source=Attribute,Path=Contract.Items,Sort=Number,RowsInHeader=1)]

<b>Schedule of Values</b>		
[Attribute(Number)]	[Attribute(Description)]	[Attribute(CostCurrentTotalValue)]

[EndTable]

<b>Total</b>	<b>[Attribute(Contract.NotToExceedAmount)]</b>
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[StartTable(Name=Modifications,Source=Attribute,Path=Contract.Modifications,Sort=Section Number,RowsInHeader=1)]

Modifications to this Subcontract	
[Attribute(Section.SectionNumber)]	[Attribute(SupplierModifications)]

[EndTable]

This Agreement is entered into as of the date entered in Article 1.

**CONTRACTOR:** [ProjectProjectManager.Company.ShortLabel]

BY: \_\_\_\_\_ [Signature(SignatureIndex=2)]

PRINT NAME: \_\_\_\_\_ [Signature(FieldName="Signer2FirstTextbox",TextBoxIndex=2)]

PRINT TITLE: \_\_\_\_\_ [Signature(FieldName="Signer2SecondTextbox",TextBoxIndex=2)]

DATE: \_\_\_\_\_ [Date(Source=Attribute,Path=Contract.Date,Format="d")]

**SUBCONTRACTOR:** [Attribute(Contract.Supplier.VendorCompany.LegalName)]

BY: \_\_\_\_\_ [Signature(SignatureIndex=1)]

PRINT NAME: \_\_\_\_\_ [Signature(FieldName="Signer1FirstTextbox",TextBoxIndex=1)]

PRINT TITLE: \_\_\_\_\_ [Signature(FieldName="Signer1SecondTextbox",TextBoxIndex=1)]

DATE: \_\_\_\_\_ [Date(Source=Attribute,Path=Contract.Date,Format="d")]

\_\_\_\_\_ [Attribute(Contract.Supplier.VendorCompany.GovernmentId)]

FED ID #: \_\_\_\_\_ [Signature(FieldName="Signer1ThirdTextbox",TextBoxIndex=1,Required="false")]

STATE LIC.# (IF APPLICABLE): \_\_\_\_\_ [Signature(FieldName="SignerFourthTextbox",TextBoxIndex=1,Required="false")]

All documentation listed below will be required to be submitted at the time of signing and returning the subcontract agreement to [ProjectProjectManager.Company.ShortLabel] for review and approval prior to any payment to be processed on this project.

- 1. Subcontract Contact Information:** Containing list of all Subcontractor suppliers including second and third tier. (See Subcontract paragraph 3.2 for continuing obligation).
- 2. Joint Check Agreement:** To be attached with subcontract contact information.
- 3. Certificate of Insurance:** Specific to each project requirements.
- 4. Pay Application Forms:** AIA G703 listing the project's Schedule of Values.

**5. Lien Waiver Forms:** To be submitted with each application for payment.

## EXHIBIT 9.2.2.1

### Insurance Minimum Requirements

**The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability.**

- 1. Commercial General Liability (CGL)** with limits of insurance not less than \$1,000,000 each occurrence, \$1,000,000 Personal and Advertising Injury, \$2,000,000 General Aggregate, \$2,000,000 Products/Completed Operations Aggregate.
  - a. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.
  - b. CGL coverage shall be written on ISO Occurrence for CG 00 01 04 13 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal advertising injury.
  - c. General Contractor, Owner and all other parties required of the General Contractor, shall be included as Additional Insureds. The endorsement shall include that any person or organization that Subcontractor is required to add as an Additional Insured under the Subcontract Documents shall be included as an Additional Insured (CG 20 38 04 13 or its equivalent). Coverage must include both ONGOING Operations and COMPLETED Operations (CG 20 10 04 13 and CG 20 37 04 13 or equivalent as permitted by law). Vicarious forms of additional insured endorsements will not be accepted. It shall apply as Primary and non-contributing Insurance before any other insurance or self-insurance, including any deductible maintained by or provided to the Additional Insured.
  - d. Subcontractor shall maintain CGL coverage for itself and all Additional Insureds for the duration of the project and maintain Completed Operations coverage for itself and each Additional Insured for at least 2 years after the completion of the Work.
  - e. Provide Stop Gap Coverage, if applicable, for the following states: North Dakota, Ohio, Washington, West Virginia or Wyoming.
  - f. Coverage shall include:
    - a. Contractual liability coverage sufficient to meet the requirements of the Subcontract Documents (including defense costs and attorneys' fees assumed under the contract, which shall be payable in addition to the limit of liability).
    - b. No separation of insured exclusion.
    - c. The following exclusions are absolutely prohibited and shall not be included in Subcontractor's policy if applicable to the work.
      1. No damage to Work performed by Subcontractor exclusion (CG 22 94 or similar).
      2. No exclusion for subsidence, which is specifically prohibited for any work involving excavation, soil stabilization, earth retention, concrete, structural steel, landscaping, waterproofing, fire protection, and plumbing.
      3. No "residential" exclusion that would void or restrict coverage due to the nature of the Work.
      4. No EFIS exclusion. If Subcontractor's scope of work involves the building's exterior finish, there shall be no EIFS exclusion on the CGL policy unless the Subcontractor maintains a Pollution Liability policy that provides coverage for the resultant damage of

the EIFS work.

**2. Automobile Liability**

- g. Business Auto Liability with limits of at least \$1,000,000 combined single limit.
- h. Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
- i. General Contractor, Owner and all other parties required of the General Contractor, shall be included as Primary and Non-Contributory Additional Insureds on the auto policy.
- j. If hauling of hazardous waste is part of the Scope, Automobile Liability Insurance with a \$1,000,000 combined single limit per occurrence for bodily injury and property damage applicable to all hazardous waste hauling vehicles, and include MCS 90 endorsement and the ISO Form CA 9948 (Pollution Liability Broadened Coverage for Business Automobile).

**3. Commercial Umbrella**

- k. Commercial Umbrella/Excess Liability Insurance for bodily injury and property damage liability must sit over Subcontractor's primary Employers' Liability, Commercial General Liability and Commercial Automobile Liability.
- l. Umbrella limits must be at least \$1,000,000.
- m. All coverages and terms required under the Commercial General Liability, Automobile Liability and Employers' Liability must be included on the Excess/Umbrella Liability policy.
- n. Higher limits may be required by Contractor or Owner on a project-by-project basis.
- o. Umbrella coverage for such Additional Insureds shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the Additional Insured other than CGL, Auto Liability and Employers' Liability coverages maintained by the Subcontractor.

**4. Workers' Compensation and Employers' Liability**

- p. Workers' Compensation Insurance and Employers' Liability Insurance (including occupational disease) to cover statutory benefits and limits under the Workers' Compensation laws of any applicable jurisdiction in which the scope is to be performed.
- q. Employers' Liability Insurance limits of at least \$500,000 each accident, \$500,000 each employee, and \$500,000 disease policy limit.
- r. Where applicable, U.S. Longshore and Harborworkers Compensation Act Endorsement shall be attached to the policy.
- s. Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.
- t. Maintain monopolistic coverage, if applicable, for the following states: North Dakota, Ohio, Washington, West Virginia or Wyoming.

**5. Builder's Risk**

- u. Upon written request of the Subcontractor, the Contractor shall provide the Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the Project and procured by the Owner or Contractor.
- v. If the Owner or Contractor has not purchased Builder's Risk Insurance satisfactory to the Subcontractor, the Subcontractor may procure such insurance as will protect the interests of the Subcontractor, its subcontractors and their subcontractors in the Subcontract Work.
- w. If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Subcontract documents, the



Subcontractor shall procure and maintain at the Subcontractor's own expense, property and equipment insurance for the Subcontract Work including portions of the Subcontract Work stored off the site or in transit, when such portions of the subcontract Work are to be included in an application for payment under Article 8.

#### **6. Installation Floater**

- x. If required by Contractor or not covered by the Builders Risk Insurance, Subcontractor shall obtain an Installation Floater to cover that portion of the Work to be constructed, installed, altered or repaired by Subcontractor. Contractor, Owner or other parties, as required by the Subcontract Documents, shall be listed as loss payees.

#### **7. Professional Liability**

- y. Subcontractor and all sub-subcontractors and Designers providing Professional Services shall provide and maintain Professional Liability Insurance coverage. The policy coverage shall be effective (retroactively, if applicable) from the date of commencement of all professional activities in connection with the scope.
- z. Professional Services always include, but are not limited to: design, architecture, engineering, testing, surveying or design/build services, temporary engineering, engineered excavations and shoring systems, post-tension supply, structured steel, specialized millwork that is performance specified, roofing or waterproofing systems, curtainwall, mechanical fire protection systems, electrical, and fire alarm systems.
- aa. Both Subcontractor and listed sub-subcontractors shall have proof of Professional Liability Insurance coverage in the amount of \$1,000,000 per claim with a maximum deductible of \$25,000 to be paid by Subcontractor.
- bb. The Subcontractor shall, upon request of Contractor, furnish a copy of its Professional Liability policy. The Professional Liability policies shall be continued in effect for the applicable statute of repose for the state where the project is located.

#### **8. Pollution Liability**

- cc. This Section is applicable to Subcontractor, and any sub-subcontractor of any tier that is providing work related to environmental services, building enclosure systems, plumbing, heating, ventilation, air conditioning, drywall, insulation, building foundations or any work which includes Microbial Matter, Mold, Fungi or Bacteria and any work which will involve the use of hazardous materials. Subcontractor and all applicable sub-subcontractors must provide and maintain a separate Pollution Liability Insurance policy including coverage for, but not limited to, claims arising out of all hazardous material and hazardous waste remediation, storage, transportation, clean-up and disposal. Pollution Liability policies must include contractual liability coverage aligned with indemnification obligation of the Subcontract Documents.
- dd. The policy limits shall be in the amount of \$1,000,000 with maximum deductible of \$25,000 to be paid by the Subcontractor.
- ee. Pollution Liability Insurance policy shall name Contractor and all other parties as required under the Subcontract Documents as Additional Insureds.
- ff. The Subcontractor and sub-subcontractors shall maintain Pollution Liability coverage for a minimum of 2 years after the completion of the Work, or such longer period as required by the Subcontract Documents. Should mold coverage be required and provided by a claims-made form, such coverage shall be maintained annually for 2 years following completion, or such longer period as required by the Subcontract Documents.

## **9. Equipment Floater**

- gg. Subcontractor shall maintain, at its sole cost and expense, insurance to protect its own equipment, tools and materials against risk of loss with sufficient limits to cover the value of all of the equipment, tools and materials Subcontractor may use in performance of the Subcontract Work. Subcontractor is solely responsible for any deductibles, self-insured retentions or uninsured losses for any reason arising out of Subcontractor's obligations in this Section. Coverage shall include equipment leased/borrowed/rented by Subcontractor.

### **Waiver of Subrogation**

Subcontractor waives all rights against the Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by Commercial General Liability, Commercial Umbrella Liability, Business Auto Liability, Builder's risk, or Workers' Compensation and Employers' Liability insurance maintained per requirement stated above and to the fullest extent allowed by law.

### **Number of Policies**

Commercial General Liability Insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.

### **Cancellation, Renewal and Modification**

The Subcontractor shall maintain in effect, all insurance coverage required under this Agreement at the Subcontractor's sole expense and with insurance companies acceptable to the Contractor. To the extent commercially available, the policies shall contain a provision that coverage will not be cancelled or not renewed until at least thirty (30) days prior written notice has been given to the Contractor. If not commercially available, Subcontractor shall be responsible for providing Contractor with notice.

### **Continuation of Coverage**

Unless otherwise outlined herein, the Subcontractor shall continue to carry Completed Operations Liability Insurance for at least two (2) years after either ninety (90) days following Substantial completion of the Work, or final payment to the Contractor, whichever is earlier. The Subcontractor shall furnish the Contractor evidence of such insurance at final payment, and one year from final payment.

### **Special Provisions**

All policies shall be written through companies duly entered and authorized to transact that class of insurance in the state in which the project is located. The Insurance Companies must have an A.M. Best rating of A- or better in the most recent Best's Key Rating Guide.

Approval, disapproval or failure to act by the Contractor regarding any insurance supplied by the Subcontractor shall not relieve the Subcontractor of full responsibility or liability for damages and accidents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the Subcontractor from liability.

Contractor shall make no special payments for any insurance that the Subcontractor may be required to carry; all are included in the contract price and in the contract unit prices.

The Subcontractor shall require all sub-subcontractors to procure and maintain all insurance as set forth in this contract.

**Requirements in the Prime Contract and other Contract Documents are also the responsibility of the Subcontractor and in addition to these requirements. It is the responsibility of the Subcontractor to know what is required of Subcontractor.**

## TRADE CONTRACT ATTACHMENT "A"

[ProjectProjectManager.Company.ShortLabel] Safety Requirements & Site Policies

"Safety first" is often heard on Crossland construction sites. Our mission is to keep everyone safe on our sites through continuous improvement on safety practices. S.T.O.P. (Safety Through Organization and Planning) is a comprehensive long term plan to put the ten best safety practices of the construction industry in place across the entire Crossland organization. This affects every Crossland employee and everyone working on a Crossland site. Subcontractors should always protect and respect the work of others while working on a job site. All subcontractors are invited to attend the Crossland Safety Orientation/10 hour OSHA course and any other safety training classes or courses offered by Crossland. These courses are offered tuition free to Crossland subcontractors.

Subcontractors working on a Crossland site must adhere strictly to responsibilities listed in section 3.14 of the Subcontract Agreement and the requirements of this Attachment A. Section 3.14.9 states, "the Subcontractor shall comply with the [ProjectProjectManager.Company.ShortLabel] Safety Program". With the implementation of S.T.O.P., our safety program includes training and a fine system for non-compliance of safety regulations. Listed below are some of the safety requirements that apply to all Subcontractors on all job sites. Where the requirements apply to "workers" or others on the site performing services, Subcontractor is responsible for ensuring that Subcontractor's employees, agents, suppliers and sub-subcontractors are notified of and comply with these requirements, in addition to all applicable OSHA requirements. While these requirements may not be inclusive of all requirements applicable to a specific job, these minimum requirements (in addition to all applicable OSHA requirements) apply to all jobs and all job sites:

1. All subcontractors will hold weekly safety meetings, or attend [ProjectProjectManager.Company.ShortLabel]'s weekly safety meetings. If not attending [ProjectProjectManager.Company.ShortLabel]'s weekly safety meetings, subcontractor's safety meetings must be documented and communicated to the Crossland site superintendent.
2. Crossland safety coordinators may stop any worker who is involved in an unsafe act. They may also stop a worker to provide positive input on safe and unsafe acts.
3. **100% fall protection that meets or exceeds OSHA requirements is mandatory for all trades and all Subcontractors working above six (6) feet on all project sites. It is Subcontractor's responsibility to comply and to ensure that its employees, agents, suppliers and sub-subcontractors comply with this rule at all times on all sites.** Except to the extent required by OSHA for work on fixed ladders, the foregoing fall protection requirement does not apply to work being performed on ladders. A "safety monitor" system is **not** permitted on Crossland job sites regardless of the type of work being performed.
4. Fines may be imposed on any Subcontractor not using safe working behavior. Beginning **May 1st, 2008** Subcontractors fined for safety violations will receive an invoice from [ProjectProjectManager.Company.ShortLabel]. All fine payments will be paid to "[ProjectProjectManager.Company.ShortLabel] Charity Account". Crossland will donate all Subcontractor fines to charitable organizations benefiting children. See fine chart below.
5. Workers shall report unsafe conditions to their supervisors immediately. No worker shall be required or knowingly be permitted to work in an unsafe place, unless for the purpose of correcting the hazard and then only after all safety precautions have been implemented.

6. Safe work habits are a must. Report any unsafe conditions or performances to Construction Manager. Follow all Crossland safety rules and procedures. Crossland's safety manual is posted in the office.
7. Suitable clothing for construction shall be worn on the construction site. Shirts with sleeves (at least t-shirt length) and full-length pants shall be required. Polyester or similar material is not allowed; no shorts, no tennis shoes and no tank tops. Proper leather hard soled shoes, and appropriate safety equipment shall be worn at all times. No "tennis shoes" will be allowed.
8. All employees on site shall wear hard hats that meet the requirements of ANSI Z89.1-1997 at all times outside the area designated as Trailer Row. Hard hats shall be worn in such a manner that the hat brim is positioned in front at all times. Hard hats may be worn backwards at the discretion of the Construction Manager. This includes all equipment operators, vehicle and truck drivers of contractors and material suppliers delivering to the site. Hard hats are required at all times on the project. No exceptions. Hard hats will not be furnished by Crossland.
9. Protect the work of others.
10. Lunch trash is to be deposited in trash cans. No exceptions.
11. Keep your work areas clean. Sweep areas at the end of each day.
12. No urinating in or around buildings. Anyone caught will be removed from project and cannot return at any time.
13. Concealed weapons will not be allowed on the project. Anyone having such will be permanently removed from the project.
14. No removal of excess materials or scraps from project.
15. Posted speed limits shall be adhered to at all time. 10 mph on designated haul roads. 5 mph inside the building on the building pad, trailer row, and other areas not designated at 10mph. 20 mph may be permitted for site/civil work away from the pad areas and away from other trades at the discretion of the Construction Manager.
16. Seatbelts shall be worn at all times in vehicles including heavy equipment. All heavy equipment shall have rollover protection and seatbelts.
17. No one shall ride in vehicle or mobile equipment unless they are on a seat. Exceptions: Scissor and boom lifts. Riding in the back of pick-ups shall not be allowed.
18. All heavy equipment including: cranes, forklifts, etc. shall have a reverse signal back up alarm audible above surrounding back ground noise.
19. No catering services shall be permitted on site.
20. Excavation work shall be performed in accordance with 29 CFR 1926 Subpart P
  - \* Flagging and/or suitable warning devices will be required around all trench and excavation work at least three (3) feet (this distance can be exceeded if site specific) from the edge of the excavation.

\* A safe means of access and egress shall be provided from excavations regardless of their depth at intervals that provide no more than 25 feet of lateral travel.

\* A competent person shall be present anytime excavation work is performed.

21. Persons working on **any** lift of **any** height (even if the lift is not six feet in height), including but not limited to, aerial, snorkel, scissor or forklift, shall be tied off, at all time, to a platform tie-off point or a similar safety device securely attached to the structure of the lift.
22. In the building, all lifts shall be propane or electrically powered. Gasoline or diesel powered lifts shall not be used in the building. Any changes to this requirement are at the discretion of the Construction Manager.
23. All propane tanks shall be stored in a tank farm. (Including empty tanks)
24. A fire watch shall be stationed to provide coverage for each welding, cutting, and other hot work operations. A fire watch may cover multiple operations within a 100-foot radius of them. In order for a fire watch to cover multiple operations, they shall have a clear line of site to each operation and unobstructed pathway to each operation. Fire watchers, shall have no collateral duties.
25. Ladders shall reach three (3) feet above the landing for safe access. All ladders shall be positioned on a stable surface and secured to prevent displacement. All ladders shall be fiberglass. Step-ladders and extension ladders are not acceptable as stairs. Each contractor is responsible for providing stairs into the building for their employees. Damaged ladders shall be removed immediately from jobsite.
26. All electrical power tools and/or equipment shall be plugged into a ground fault circuit protection (GFCI) at the source of the electrical power. All frayed and/or damaged electrical cords shall be removed from service and repaired. Cords shall not be tied in knots.
27. Only UL-approved metal fuel cans with flame arresters and self-closing pour spouts shall be allowed on sight. Fuel cans, shall not be stored inside the building or inside trailers. Can shall be brought inside the building only to fuel equipment and then removed immediately.
28. All chemical materials used shall have a Safety Data Sheet (SDS) filed with Construction Manager and posted in an area where work is being performed.
29. Electrical panels shall not be accessed by anyone. Only those authorized by Construction Manager shall have access to the electrical panel.
30. Flag, barricade, or sign areas to keep employees from exposures to potentially hazardous work conditions.
31. All underground electrical utilities shall be located prior to any excavation work occurring. The electrical contractor shall be notified to assist with this location. As-Built drawings and electronic location shall be used to locate all underground electrical utilities. Contractors working around overhead electrical lines shall ensure that all equipment, material, and personnel are at least 10 feet from the overhead lines.
32. As described in each Contractor's Safety Program work permits shall be utilized for those work activities that specifically require them. (Examples are confined space, electrical hot work, welding, painting work where underground utilities are present, etc.)
33. All employees shall obey all posted safety signs.

34. Clean up and housekeeping shall be top priority. This project shall be kept clean and orderly at all times. The work area shall be cleaned on a continuous basis; no debris or trash will be permitted. Dumpsters shall not be backed up to any location of the building. They shall be maintained at a minimum of 50 feet from the building.
35. Glass containers of any kind shall not be brought on to the construction site.
36. Each fuel storage tank brought onto the construction site shall be provided with its own secondary containment unit. The use of earthen-dikes shall not be allowed. All fuel tanks shall be grounded in accordance with NFPA requirements.
37. Concrete trucks shall have all concrete chutes removed, with top cure in the raised and locked position while traveling on the job-site.
38. Storage required by the Contractor shall be in areas designated by the Owner. All materials on the construction site shall be stored/staged on dunnage.
39. No one will be allowed to move a trailer or any other device for living on site.
40. It is a policy of the Owner that no smoking will be permitted in the building once the roof and sidewalls are installed. The fine for smoking in the building shall be \$50 per infraction. All fines will be paid by the contractor to the owner's designated charity. All contractor and Subcontractor employees shall abide by this policy.
41. There will be no smoking/tobacco products, eating, or drinking (with the exception of water) on the finished floors. Smoking will be permitted in designated areas at least 50 feet from the building.
42. Confine vehicle parking and all vehicle deliveries to only those areas designated by the Construction Manager.
43. No parking in construction area. Designated parking areas only.
44. Only company vehicles shall be allowed on the construction site; all others shall use the employee parking lot designated on the construction site.
45. Permission shall be obtained from the Construction Manager prior to taking any vehicle into the building.
46. All employees shall conduct themselves in a worker like manner at all times. Any other personnel, horseplay or disruptive activities of any kind shall result in immediate dismissal/removal from the job site.



## FINE CHECKLIST

<b>OFFENSE</b>	<b>1ST</b>	<b>2ND</b>	<b>3RD</b>	<b>OFFENSE</b>	<b>1ST</b>	<b>2ND</b>	<b>3RD</b>
<b>FALL PROTECTION</b>				<b>TOOLBOX SAFETY TALKS</b>			
FALL PROTECTION ABOVE 6'	\$500	\$1,000	\$2,000	SUPER NOT PERFORMING SAFETY TALKS	\$200	\$400	\$800
<b>LADDER</b>				<b>TEMP. LIGHTING</b>			
LADDER NOT TIED OFF	\$200	\$400	\$800	LIGHTS AT LEAST 8'	\$100	\$200	\$400
LADDER NOT 3' ABOVE	\$200	\$400	\$800	PLASTIC COVERS	\$100	\$200	\$400
STEP LADDER USED IMPROPERLY	\$500	\$1,000	\$2,000	BAD WIRES	\$100	\$200	\$400
<b>ELECTRICAL</b>				NOT ENOUGH LIGHT	\$100	\$200	\$400
BAD CORD	\$200	\$400	\$800	<b>CRANE</b>			
NO GFCI	\$200	\$400	\$800	OPERATOR DID NOT INSPECT CRANE	\$200	\$400	\$800
UNAUTHORIZED PLUG SET	\$200	\$400	\$800	OPERATOR IS NOT CERTIFIED	\$500	\$1,000	\$2,000
<b>P.P.E.</b>				RIGGING IS BAD	\$200	\$400	\$800
NO SAFETY GLASSES	\$100	\$200	\$400	HOISTING OVER PERSONNEL	\$200	\$400	\$800
NO HARD HAT	\$100	\$200	\$400	<b>FLAMMABLE STORAGE</b>			
FOOT PROTECTION	\$100	\$200	\$400	SAFETY CANS ARE BAD	\$100	\$200	\$400
<b>EXCAVATION</b>				PLASTIC CANS	\$100	\$200	\$400
SPOIL PILE NOT 2' AWAY	\$200	\$400	\$800	NOT LABELED PROPERLY	\$100	\$200	\$400
EXCAVATION NOT INSPECTED	\$200	\$400	\$800	<b>COMPRESSED GAS</b>			
NO LADDER IN EXCAVATION	\$500	\$1,000	\$2,000	GAUGES ARE IN DISREPAIR	\$100	\$200	\$400
<b>SCAFFOLDS</b>				BOTTLES WERE NOT TIED UP	\$100	\$200	\$400
NO GUARDRAILS ON AT 10'	\$500	\$1,000	\$2,000	NO FIRE EXT. / FIRE EXT. NOT CLOSE	\$100	\$200	\$400
SCAFFOLD NOT INSPECTED	\$200	\$400	\$800	BOTTLES WERE NOT 20' APART	\$100	\$200	\$400
SCAFFOLD PLANKS BAD	\$200	\$400	\$800	<b>REINFORCING STEEL</b>			
<b>FORKLIFTS</b>				REBAR CAPS NOT ON REBAR	\$200	\$400	\$800
OPERATOR W/O SEATBELT	\$200	\$400	\$800	<b>SCISSOR LIFTS</b>			
OPERATOR NOT TRAINED	\$500	\$1,000	\$2,000	MID RAIL IS TIED UP	\$100	\$200	\$400
LULL BASKET NOT TIED TO LULL	\$200	\$400	\$800	EMPLOYEE CLIMBING GUARDRAIL	\$500	\$1,000	\$2,000
EMPLOYEE NOT TIED OFF	\$500	\$1,000	\$2,000	DRIVING WHILE BASKET IS UP	\$200	\$400	\$800
<b>HOUSEKEEPING</b>				<b>POWER TOOLS</b>			
JOBSITE WAS NOT CLEAN	\$200	\$400	\$800	BAD CORD	\$200	\$400	\$800
<b>STAIRS</b>				<b>FIRE PROTECTION</b>			
NO GUARD RAIL ON STAIRS	\$500	\$1,000	\$2,000	NO FIRE EXTINGUISHER WITHIN 100'	\$200	\$400	\$800
PANS NOT POURED	\$200	\$400	\$800	NO EXTINGUISHER ON EVERY LEVEL	\$200	\$400	\$800
<b>WELDING</b>				NO FIRE EXTINGUISHER AT STAIRWELL	\$200	\$400	\$800
CABLES ARE BAD	\$200	\$400	\$800	<b>STEEL ERECTION</b>			
FIRE EXT. NOT CLOSE	\$200	\$400	\$800	NO LETTER CONCRETE 75%	\$200	\$400	\$800
<b>SWPPP</b>				CONNECTING ABOVE 15' W/O HARNESS	\$750	\$1,500	\$3,000
TRACKOUT	\$250	\$500	\$1,000	CONNECTING ABOVE 20' W/O HARNESS	\$750	\$1,500	\$3,000
NOT INSPECT WEEKLY/AFTER RAIN	\$250	\$500	\$1,000	DECKING ABOVE 15' W/O CDZ	\$750	\$1,500	\$3,000
SITE PLAN MARKED AS REQUIRED	\$250	\$500	\$1,000	DECKING ABOVE 20' W/O FALL PRO	\$750	\$1,500	\$3,000
SILT FENCE DOWN	\$250	\$500	\$1,000	<b>BAKER SCAFFOLD</b>			
BMP	\$250	\$500	\$1,000	NO FALL PROTECTION	\$500	\$1,000	\$2,000
ENTRY SIGN	\$250	\$500	\$1,000	<b>SNORKEL LIFTS</b>			
NO SWPPP PLAN	\$250	\$500	\$1,000	OPERATOR NOT TIED OFF	\$500	\$1,000	\$2,000