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SUBCONTRACT AGREEMENT

THIS SUBCONTRACT AGREEMENT (the "Subcontract") is entered into as of _____ (the "Effective Date") by and between

CONTRACTOR ("Contractor"),
with an office located at _____ and

("Subcontractor"),
with an office located at _____.

Contractor and Subcontractor agree as follows:
Contractor Project No.: _____
Subcontract No.: _____
Owner: _____
Project and Location Name: _____
Date of Prime Contract: _____
Payment and Performance Bonds Required: _____
Initial Retainage Percentage (see Section 18(c)): _____

1. SCOPE OF WORK AND CONTRACT PRICE.

The scope of Work covered by this Subcontract is set forth below (but also includes all labor and materials reasonably inferable therefrom or necessary to produce complete and usable Work, except for any items expressly stated to be outside the scope of this contract):

Complete Spec Section(s): _____
Partial Spec Section(s): _____

Scope:

The Subcontract Documents include, without limitation, the following Contractor documents (all available from Contractor on request if not attached):

- MES Addendum
- Insurance Addendum
- CCIP Documents.
- Safety4Site program terms
- Scope Review Meeting Minutes dated:
- Last Planner scheduling requirements.
- Quality Leadership System requirements.
- Other Contractor-standard project management procedures such as those related to cost, coordination, commissioning and payment.

For the proper performance of the above Work, Contractor agrees to pay Subcontractor the sum of _____ (\$##,###.##) (the "Contract Price").

2. GENERAL SCOPE OF WORK.

2(a) Subcontractor shall furnish all plant, materials and labor and perform all work and services required by the Subcontract Documents, including but not limited to the specific scope described in Section 1 (the "Work") in accordance with the requirements of this Subcontract and of the Prime Contract, in a manner completely acceptable to Contractor and Owner (including, without limitation, whether or not specified in the Prime Contract, the furnishing at the Construction Site or elsewhere, as required, of all tools, equipment, scaffolding, supplies, molds, patterns, drawings, measurements, and incidental labor, and doing all cutting, blocking, patching and cleaning as needed in order to make Subcontractor's performance complete and acceptable), for the Contract Price stated in Section 1 as it may be adjusted by signed change orders.

2(b) Subcontractor assumes and shall perform all of Contractor's obligations to Owner and others under the Prime Contract relating to the Work to be performed by Subcontractor.

2(c) If any of the Work under this Subcontract is designated in the Subcontract Documents as being "design-build", "performance specification", or any words of similar import indicating that the Subcontractor is responsible for designing any part of such Work, then with respect to all Work for which Subcontractor has design responsibility ("Design-Build Work"), the following provisions shall apply:

(i) The design ("Subcontractor Design") of the Design-Build Work shall be performed in a timely manner so as to cause no delay to Contractor, by qualified architects and/or engineers having all applicable licensure and registrations, who shall affix their professional stamps or seals to all resulting drawings and specifications.

(ii) The Subcontractor Design shall reflect good professional practices and shall comply with all applicable legal requirements and other requirements of the Subcontract Documents. The Subcontractor Design shall include all architectural and/or engineering work specified in the Subcontract Documents or reasonably inferable therefrom in order to produce a complete and usable result. The Subcontractor Design is subject to the approval of Contractor and of the project Architect, but such approvals shall not relieve the Subcontractor of sole responsibility for the Subcontractor Design.

(iii) If so directed by Contractor, the Subcontractor shall coordinate the Subcontractor Design with the project Architect or applicable consultant, with copies of all correspondence to Contractor. Whether or not the Subcontractor is authorized to communicate directly with the project Architect, the Subcontractor shall promptly revise all drawings and specifications to remedy any objections thereto by the project Architect.

(iv) Unless otherwise specified, the Subcontractor is responsible for obtaining all necessary permits for the Design-Build Work.

(v) The Subcontractor shall maintain, or cause the design professional(s) performing the Subcontractor Design to maintain, professional liability insurance applicable to the Design-Build Work in accordance with the Insurance Addendum or such greater amounts as may be required elsewhere in the Subcontract Documents.

(vi) The Subcontractor shall be responsible for any delays or other losses or damages incurred by Contractor due to any errors, omissions or delays in the Subcontractor Design.

2(d) The Subcontractor accepts assignment of, and liability for, the installation and warranty requirements of all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Subcontractor's Work. The Subcontractor shall also be responsible for the installation and warranty requirements of any Messer pre-ordered and/or pre-purchased items associated with Subcontractor Work, if any, as if the Subcontractor were the original purchaser. The Contract Price includes, without limitation, all costs and expenses in connection with confirming equipment/material compliance with project specifications, receipt, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. The Subcontractor shall be responsible to coordinate delivery dates to meet the project schedule requirements and be responsible for impacts to their labor as a result of changes in delivery dates for which a minimum of 15 days' notice is provided. All warranty obligations with respect to Subcontractor's Work and all obligations of Subcontractor to correct any defects in Subcontractor's Work under the Subcontract Documents shall also apply to any pre-purchased items, unless the Subcontract Documents specifically provide otherwise.

2(e) The terms "Work", "Subcontractor's Work" or "Work to be performed by Subcontractor" as used in this Subcontract mean all of the foregoing set forth in this Section 2.

3. INCORPORATION BY REFERENCE OF PRIME CONTRACT DOCUMENTS.

3(a) The Owner and Contractor have entered into a prime contract dated as set forth above for the performance of the Project (the "Prime Contract"), which is incorporated herein by reference and is available for inspection by Subcontractor (exclusive of the provisions thereof defining Contractor's contract price or other compensation). The Prime Contract includes the agreement between Contractor and the Owner and all other contract documents referenced therein including, to the extent included in the Owner-Contractor contract and without implied limitation, the invitation to bid, pre-contract bulletins, general and special conditions, drawings, plans and specifications and all addenda thereto. If the Owner and the Contractor have not entered into the Prime Contract when this Subcontract is executed, then the term "Prime Contract" shall refer to the then-current proposed version of the Prime Contract as identified by the Contractor which version shall be furnished to the Subcontractor upon request and may be supplemented by change order to reflect the final version (Subcontractor agrees to execute any such change order upon request of Contractor without additional compensation if there is no material adverse change in the obligations flowing down to Subcontractor). This Subcontract and all other documents together with the Prime Contract and all other exhibits and other documents referenced in this Subcontract are referred to as the "Subcontract Documents".

3(b) Subcontractor acknowledges that it has had full opportunity to examine a copy of the Prime Contract (other than provisions relating to the contract price or fee payable to Contractor).

3(c) Subcontractor shall be bound by all interpretations of the Prime Contract by Owner or its representatives furnished to it by Contractor which are binding upon Contractor.

3(d) Subcontractor, prior to beginning work, shall notify Contractor of any claimed deficiencies, discrepancies, ambiguities or errors in the Prime Contract affecting its Work, but shall not deviate from such Prime Contract or substitute materials (including "or equal" materials) without Contractor's prior consent.

3(e) Plan deviations and material substitutions desired by Subcontractor shall be submitted to Contractor for approval by Contractor and Owner in accordance with any procedures set forth in the Prime Contract, and if approved, shall be Subcontractor's sole responsibility. Subcontractor shall be liable for any additional cost to Contractor or others resulting from such deviations or substitutions.

4. INVESTIGATION OF SITE.

Subcontractor warrants that it has made such investigation and inspections as to the nature and location of the Work and the general and local conditions at the Construction Site (including, if relevant, the character of the surface and subsurface conditions, and any other obstacles to be encountered on, under and around the Site) as are necessary to determine the difficulty and cost to Subcontractor of properly performing the Work (including but not limited to any investigation and inspections required by the Subcontract Documents). Contractor is not responsible for any interpretations or conclusions made by Subcontractor on the basis of information made available to Subcontractor by Contractor.

5. PERMITS, LICENSES AND COMPLIANCE WITH LAW.

5(a) Except for the general building permit and any other permits to be obtained by others under terms of the Subcontract Documents, Subcontractor, at its expense, shall secure and keep in effect and good standing all licenses, permits and inspection certificates pertaining to the Work, and shall pay all installation, connection and use fees applicable to its Work. Subcontractor shall comply and require its sub-subcontractors to comply with all laws, ordinances, rules and regulations of governmental bodies and recommendations of insurance underwriters with respect to the Construction Site and the Work, and Subcontractor shall defend and indemnify Contractor against any loss or claim arising from breach of this covenant.

5(b) Without limiting Subcontractor's other obligations under this Section, Subcontractor shall comply with the Immigration Reform and Control Act of 1986 and regulations thereunder by establishing and diligently implementing, and requiring each of its sub-subcontractors of any tier to establish and diligently implement, a policy of hiring only individuals who are lawfully authorized to work in the United States. Subcontractor shall defend and indemnify Contractor and Owner against any claim or liability arising from the failure of Subcontractor or a sub-subcontractor of any tier to comply with the foregoing requirements.

5(c) If Owner is an agency of the federal government, then Subcontractor agrees to comply with the additional requirements set forth in the attached Federal Subcontract Rider.

5(d) Without limiting Subcontractor's other obligations to comply with applicable laws, Subcontractor acknowledges the domestic steel requirements of Section 153.011, Ohio Revised Code, in connection with certain Ohio construction projects supported by State funds. The following notice is provided in compliance with that statute, and shall apply **only** if this Subcontract relates to a covered project:

DOMESTIC STEEL USE REQUIREMENTS AS SPECIFIED IN SECTION 153.011 OF THE REVISED CODE APPLY TO THIS PROJECT. COPIES OF SECTION 153.011 OF THE REVISED CODE CAN BE OBTAINED FROM ANY OF THE OFFICES OF THE DEPARTMENT OF ADMINISTRATIVE SERVICES.

Subcontractor shall defend and indemnify Contractor against any claim or liability, including but not limited to civil penalties under O.R.C. Section 153.99(B), related to actual or alleged violation by Subcontractor (or any lower tier under Subcontractor) of Section 153.011.

6. TAXES.

Subcontractor shall timely file all required tax returns with, and pay when due all taxes owing to, each governmental body applicable to the Work hereunder and to the wages of its employees for services in connection herewith (including, without limitation, sales, use, gross receipts, commercial activity, excise, unemployment and FICA taxes), including but not limited to sales or use taxes based on purchases of materials, use of temporary services, or any other taxable purchase of goods or services by Subcontractor or anyone under it. Subcontractor shall not assume that any of its purchases of taxable goods or services are exempt from sales or use taxes unless so directed by Contractor and any required exemption certificate under applicable state law has been received.

7. WORKERS' COMPENSATION.

7(a) Without limiting Section 5 hereof, Subcontractor, at its expense, shall fully comply with the workers' compensation laws of each state in which Work is performed by its employees in connection herewith, and the safety and other regulations of the governmental authorities which

administer such laws, and shall deliver to Contractor certificates evidencing such compliance with respect to each such applicable state which issues compliance certificates. No work shall be commenced until Subcontractor is in compliance with such laws and such certificates have been received by Contractor.

7(b) Contractor, without notice to Subcontractor, may pay any workers' compensation premiums or workers' compensation claim charged against Contractor based on Subcontractor's Work and bill such amounts to Subcontractor.

8. INSURANCE

8(a) Subcontractor, at its expense, shall keep in effect (and furnish Contractor certificates that it has in effect) until the final acceptance of its Work, and thereafter as applicable, with insurance carriers acceptable to Contractor, all coverages set forth in the attached Insurance Addendum and shall fully comply with the requirements of all such policies. Contractor makes no representation or warranty to Subcontractor or any third party that the insurance or coverage required is sufficient in kind or quantity to meet any legal requirement or to cover any loss. Subcontractor is not restricted from carrying higher limits or additional coverages beyond those required in the Insurance Addendum.

8(b) When requested in writing, Contractor shall provide the Subcontractor with copies or certificates of the property insurance (builder's risk) policies if any is in effect for the Project. Subcontractor acknowledges that builder's risk coverage, even if written on a so-called "all risk" basis, does not cover all potential causes of loss or damage. The Contractor shall notify the Subcontractor if builder's risk insurance policies are not in effect for the value of the Subcontractor's Work (other than deductibles reflected in the Prime Contract); in that case, the Subcontractor may purchase builder's risk insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the reasonable cost of the insurance by an adjustment in the Subcontract Price. Subcontractor acknowledges that waiver of subrogation in favor of Subcontractor only applies to the extent, if any, that losses or damages are covered by property insurance applicable to the Work and to the extent that interests of Contractor and Subcontractor are covered by such insurance; thus, if Subcontractor causes a loss, Subcontractor will be responsible for any uninsured or underinsured amounts such as the policy deductible, unless otherwise specifically provided in the Subcontract Documents. If the builder's risk policy is provided by Contractor, the following additional terms apply: (i) Subcontractor is hereby designated as an additional named insured under the policy and the policy shall protect Subcontractor's interest in the Work (subject to policy limits, excluded causes of loss, deductibles, and other policy terms); (ii) Contractor, as the first named insured, shall adjust any insured loss and take any other actions under the policy on behalf of itself, Subcontractor and any other affected insureds and its reasonable decisions in doing so shall be final; (iii) policy proceeds are payable only to Contractor and shall be distributed to or expended for the benefit of all affected insureds in such manner as Contractor reasonably determines, which decisions shall be final; and (iv) Contractor waives all claims against Subcontractor to the extent of builder's risk insurance proceeds actually received by Contractor to the maximum degree permitted by such policy and any exceptions allowing the insurer to retain subrogation rights against Subcontractor which, under policy terms, may be waived by Contractor without impairing Contractor's coverage are hereby waived.

9. INDEMNITY.

To the fullest extent permitted by law, Subcontractor shall indemnify Contractor, Owner and any other persons required by the Prime Contract (collectively the "Indemnitees) from any and all (A) losses, costs, expenses, damages and claims (collectively "claims and losses") (including, without limitation, attorneys' fees) arising from or related to injury to or death of, or damage to the property of, any person and (B) contractual obligations, if any, assumed by Contractor in the Prime Contract to defend and indemnify Owner or other persons from liability arising from or related to injury to or death of, or damage to or destruction of the property, of any person, including but not limited to employees of Subcontractor; but in either case, only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Subcontractor shall also have an independent obligation to defend the Indemnitees against any claim described in (A) or (B) above which is made by a third party where an allegation of negligence is made against the Subcontractor, Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of the merits of the claim and regardless of whether negligence of an Indemnitee is also alleged. The foregoing indemnity is not limited by any immunity that would otherwise apply under any workers' compensation law, other employee benefit law, or constitutional provision, and such immunity is waived by Subcontractor but only for purposes of this indemnity and not as between Subcontractor and its employees.

10. ACCIDENT REPORTS.

Subcontractor, by the next working day after the occurrence of each accident related in any way to the Work involving personal injury or death or damage to property, shall deliver to Contractor a report thereof, which may be a copy of any accident report delivered to its insurance carrier.

11. BONDS.

Unless specified as inapplicable above, Subcontractor, at its expense, shall deliver to Contractor and keep in effect until final acceptance of its Work and expiration of all warranties, performance and payment bonds in the principal amount of 100% of the Contract Price (including any increases by change order) or such greater amount as is required by the Prime Contract, which bonds shall be on a form provided by or otherwise acceptable to Contractor. Bonds must have a corporate surety approved by Contractor which is authorized to provide these coverages in the state in which the Work is being performed and which (i) is listed in the current Department of the Treasury's Listing of Approved Sureties (Department Circular 570) with a per-bond limitation not less than the bond amount required hereunder, and (ii) unless otherwise required by law or Prime Contract terms, has an A.M. Best rating of not less than A- VI. Contractor may, in its discretion, approve a lower A.M. Best rating in a particular case upon request by Subcontractor. If Section 1 provides for the cost of bonds to be reimbursed in addition to a stated Contract Price, the amount payable

to Subcontractor for the bonds shall be the actual charge to Subcontractor from its bonding company without markup, but not in excess of the bond cost (if any) specified in Subcontractor's bid or proposal (or calculated from the bid or proposal if a formula is specified) and any increased bond costs due to change orders increasing the Contract Sum. Subcontractor shall submit to Contractor a copy of the bond invoice from its bonding company or agent upon request. If at any time during the term of the Subcontract, Subcontractor's surety does not meet the foregoing Treasury Listing or A.M. Best rating requirements, then Subcontractor shall promptly deliver replacement bonds to Contractor meeting those requirements without additional cost to Contractor.

12. ACCEPTANCE OF PRECEDING WORK.

Subcontractor, before beginning work, shall examine the preceding work of others which may affect its Work, and shall notify Contractor in detail of any claimed defects or deficiencies therein which may affect Subcontractor's Work. If such notice is not given, all such prior work shall be deemed acceptable to Subcontractor. In case of dispute as to whether such other work is defective or deficient, Subcontractor nevertheless shall proceed immediately with its Work if notified by Contractor to proceed.

13. TIME OF PERFORMANCE AND TIME SCHEDULE.

13(a) Time is of the essence of this Subcontract, and Subcontractor shall keep itself informed as to the progress of the work of others and shall be prepared to, and shall commence, its Work promptly upon notice from Contractor, and shall perform its Work thereafter promptly and in such manner as not to delay Contractor, any other prime contractor, or other persons performing work at the Construction Site.

13(b) Subcontractor shall begin and complete the various parts of its Work in accordance with (i) the time schedule (and subsequent modifications thereof) delivered by Contractor to Subcontractor as it may be modified from time to time, or (ii) if none is delivered, the directions from time to time delivered by Contractor to Subcontractor. Any claim that Subcontractor may have based on any change in the Work schedule by Contractor shall be waived unless submitted to Contractor within 10 days after the change is directed and in any event, no such claim shall be valid unless Contractor's schedule change is unreasonable nor for an amount greater than Subcontractor's documented incremental payroll and benefit costs of using overtime as a direct result of the schedule change. If Subcontractor fails to perform any phase of its Work in accordance with such time schedule or directions, upon notice from Contractor, Subcontractor, at its expense shall schedule such overtime work or make such increase in its working forces, or both, as required by Contractor, in order to promptly cure its failure to comply with the time schedule or such directions; or Contractor, at its option and at Subcontractor's expense, may supplement Subcontractor's forces with Contractor personnel or others as determined by Contractor proceeding under Section 26.

13(c) If Contractor directs Subcontractor to schedule overtime work not otherwise required by this Subcontract and not pursuant to Section 13(b), Subcontractor will be given an increase in the Contract Price equal to the premium time portion of wages paid to its employees, plus taxes and benefits payable thereon, but excluding (unless specifically authorized by Contractor) any allowance for overhead and profit, consequential damages or other costs.

13(d) If the Prime Contract provides for liquidated damages for delay, or if Contractor is otherwise liable to Owner for delay damages, Subcontractor is liable to Contractor for any liquidated or other damages which may be assessed by Owner which arise from delay which is the fault of Subcontractor or anyone under it. In case of delay which is only partly the fault of Subcontractor or those for whom Subcontractor is responsible, Contractor shall make a reasonable allocation of liquidated damages or other delay damages among the parties responsible and such allocation shall be final unless Subcontractor demonstrates that there is no reasonable basis for the allocation.

14. EXTENSIONS OF TIME.

14(a) If Subcontractor is delayed in the performance of its work by (i) an unreasonable act or omission to act of Contractor or Contractor's other subcontractors ("Contractor delay") or (ii) any other cause beyond Subcontractor's reasonable control which would entitle Contractor, if it were the party delayed, to an extension of time under the Prime Contract (herein referred to as a "delay from other causes"), and if Subcontractor claims an extension of time within two working days after commencement of such delay, Contractor, subject to such approval as may be required from Owner, will grant to Subcontractor an equitable extension of time for the completion of the Work so delayed (which shall be limited to the amount, if any, by which the critical path of the Work is unavoidably impacted by such delay). If such delay is a delay from other causes, Subcontractor, as a condition precedent to being granted an extension of time, shall give such further notices with respect to such delay as are required by the Prime Contract and as may be necessary in order that Contractor shall have reasonable time to comply with the requirements of the Prime Contract with respect thereto.

14(b) Any extension of time granted by Contractor, or the refusal by Contractor to grant an extension of time, shall be final and binding upon Subcontractor unless Subcontractor, within two business days after the date on which Contractor notifies it granting or refusing to grant an extension of time, notifies Contractor that it requires its right to such extension of time to be determined as provided in Section 31, Disputes.

14(c) Subcontractor shall not be entitled to any increase in the Contract Price or damages by reason of any such delay from other causes unless Owner is liable for and pays the same to Contractor. Contractor shall not be obligated to apply to Owner for an increase in the Contract Price or for damages on behalf of Subcontractor unless such application is provided for by the Prime Contract and Subcontractor, at its expense, does all things necessary in order to process such claim. Contractor, upon receipt of any payment by Owner based upon any such claim for

Subcontractor, will pay the same to Subcontractor less its expenses. In case of Contractor delay, Contractor's liability shall be limited to the additional out-of-pocket costs incurred by Subcontractor in performing the Work due to such delay, excluding consequential damages.

15. WORKCHANGES.

15(a) Within 10 days after written request from Contractor (or within such other time as is specified in such request), Subcontractor shall submit to Contractor its proposal (with computations and supporting data in such detail as Contractor requires) for eliminations of, changes in, or additions to the Work thereby requested, stating:

- (i) a proposed lump sum amount for such Work, which shall be based on a justified estimate of the direct cost of the change plus the applicable markup percentage for overhead and profit specified in the Prime Contract (or if no such percentage is specified, 10% for change Work performed by Subcontractor's own forces and 5% on any such Work performed by a sub-subcontractor;
- (ii) unit prices therefor, in addition to any unit prices applicable thereto already specified herein, including estimated quantities and computations;
- (iii) Subcontractor's documented estimate of the direct cost of labor and material required to perform the change. If Subcontractor is authorized by Contractor to proceed on this basis, Subcontractor shall be reimbursed for the justified and documented direct cost of labor and materials incurred to perform the change plus the applicable markup percentage for overhead and profit specified in the Prime Contract (or if no such percentage is specified, 10% for change Work performed by Subcontractor's own forces and 5% on any such Work performed by a sub-subcontractor);
- (iv) deductions to be allowed from the Contract Price for Work, if any, eliminated; and
- (v) additional time, if any, requested for the completion of such additional or changed Work.

15(b) On receipt of such proposal, Contractor may issue a change order directing Subcontractor to proceed with the changed work, and either (A) authorizing an adjustment in the Contract Price therefor on anyone of the bases set forth in clauses (i) to (iv), inclusive, of Section 15(a) (or partly on a unit price and partly on a fee basis), or (B) directing that the work be done at Subcontractor's cost of direct labor and of materials plus a total of 10% (unless otherwise stated in Section 1) for overhead and profit. Such change order shall also specify the deductions, if any, from the Contract Price for eliminations and additional time, if any, allowed.

15(c) Subcontractor, within two business days after such change order is issued, by written notice to Contractor, may object to any determinations of price adjustment and additional time which are not in accordance with its proposal (or any revised proposal submitted at Contractor's request), in which event the matter so objected to shall be finally determined under Section 31, Disputes. Otherwise, the change order shall be final and binding on Subcontractor.

15(d) If Subcontractor does not submit the proposal within the time specified in Section 15(a), Contractor may issue such change order, directing the work to be done on the cost plus percentage basis, specified in clause (B) of Section 15(b), and specifying the amount of any deduction from the Contract Price for eliminations and any additional time allowed for such work, and such change order shall be final and binding upon Subcontractor.

15(e) Unless Contractor otherwise directs, Subcontractor shall proceed immediately with the work in accordance with each such change order, regardless of whether it is objecting to the Contract Price adjustments or time allowance, if any, specified therein.

15(f) If the change order requires the work to be done on a cost plus either percentage or fixed fee basis, such cost shall include only the net cost of material and equipment and the net cost of direct labor physically performing the work at the Construction Site at the lowest applicable hourly rate, including taxes and benefit costs, and workers' compensation and liability insurance premiums thereon, and Subcontractor shall deliver daily a statement of such net costs charged to the work, performed during the preceding day, to Contractor's Site-Based Project Leader for his or her approval or correction. Such statement as approved or corrected will be used as the basis for progress payments to Subcontractor for such work. If Subcontractor notifies Contractor within two business days objecting to Contractor's correction thereof and the parties do not agree upon an adjustment within seven days thereafter, Subcontractor may apply to have the matter settled under Section 31, Disputes; otherwise, the Contractor determination shall be final and binding upon Subcontractor.

16. DIRECT BENEFIT WORK.

Any work performed by Subcontractor at the request of and for the direct benefit of Contractor (other than the Work) or work performed by Contractor at the request of and for the direct benefit of Subcontractor shall be performed at the reasonable and customary actual cost of labor and materials (actual cost does not include the cost of a non-working foreman), plus a total of 10% for overhead and profit. If the Prime Contract or the other Subcontract Documents include specified hourly charges for labor, then those rates shall be used instead of actual cost. Charges for direct benefit work shall be submitted by invoice and payment shall be made within thirty days after invoice is received. Without limiting any

other right or remedy, Contractor may offset and deduct any such charges against the Contract Price and any amount then or thereafter becoming due to Subcontractor. This Section 16 does not apply to work performed by Contractor without Subcontractor's authorization as a result of Subcontractor's breach of duty.

17. SUBCONTRACTOR'S PAYMENT BREAKDOWN SCHEDULE.

Subcontractor, prior to delivering its first progress payment application, shall deliver to Contractor a payment breakdown schedule (schedule of values), allocating the total Contract Price to the separate phases of its Work in a standard manner acceptable to Contractor, stating separately amounts for labor and materials and prorating overhead and profit among such separate phases, which schedule shall be subject to such adjustments as Contractor or the Owner may require. This schedule of values shall be submitted via appropriate submission method as designated by Contractor for approval. Subcontractor shall deliver to Contractor for similar approval such supplements thereto as Contractor requires in order to reflect approved changes in the Contract Price.

18. PROGRESS PAYMENTS.

18(a) Subcontractor, on or before five days prior to the end of each calendar month, or as scheduled by Contractor shall deliver to Contractor a progress payment application, together with an accurate estimate (based upon approved payment breakdown schedule) of the value of the material furnished and Work properly completed during the calendar month or other applicable period specified therein via such website or other submission method as is designated by Contractor from time to time. Such application shall reflect any bills then due Contractor and include such detailed statements of payments made by Subcontractor as Contractor may require, together with sworn statements of Subcontractor and its sub-subcontractors who have performed any part of the Work, certificates of material suppliers who have furnished machinery, materials or fuel to the Construction Site, and appropriate mechanics' lien waivers of the Subcontractor and of its sub-subcontractors and suppliers for work and material paid for by Subcontractor. No amount shall be included in such application

- (i) for cost of material delivered to the Construction Site but not incorporated into the Work if the Prime Contract requires incorporation before payment to Contractor; or
- (ii) for additional or changed Work unless authorized by a change order issued by Contractor.

18(b) Contractor will include in its next progress payment application to Owner the amount claimed due by the Subcontractor in its last progress payment application as approved by Contractor, before deduction of any bill owed to Contractor as reflected therein, and on or before 10 days (or such other time as is required by the Prime Contract or by law) after payment by Owner will pay to the Subcontractor the amount owed to Subcontractor, less retained percentage thereof, if any, provided by Section 18(c) or the Prime Contract and less any bills owed to Contractor, except as otherwise provided in Section 18(d). Contractor shall not be obligated to make any payment to Subcontractor in the absence of receipt of the corresponding payment from the Owner; however, if Contractor has not received the corresponding payment from the Owner when payment to the Subcontractor becomes 90 days past due, Contractor agrees to make payment at that time from its own funds unless otherwise stated in Section 1. Contractor may withhold payment if Subcontractor has not submitted certified payroll reports, other reports as required by the Subcontract Documents, or other Contractor Subcontract compliance requirements (current insurance certificate, executed Subcontract, Subcontract bonds if required, etc.).

18(c) The retained percentage to be deducted by Contractor from each progress payment shall be as specified above (but not in excess of any maximum amount permitted by the Prime Contract or by law). If the Prime Contract provides that the percentage retained by Owner shall be reduced or eliminated after Contractor has completed a specified proportion of the work, and if the Prime Contract so requires, Contractor will similarly reduce or eliminate the retained percentage from Subcontractor after Contractor has completed such percentage of its work and Subcontractor has completed a similar percentage of its Work as long as the Work remains timely and otherwise satisfactory to Contractor.

18(d) Contractor may withhold all or any portion of each progress payment to Subcontractor as reasonably necessary to protect Contractor against loss until

- (i) payment therefor has been received by Contractor from Owner except as otherwise provided in Section 18(b),
- (ii) Subcontractor has corrected any rejected Work,
- (iii) all claims by others against Subcontractor, including but not limited to those described in Section 22(b), have been settled;
- (iv) any obligation owed by Subcontractor to Contractor related to this Project or any other project has been settled,
- (v) any reasonable doubt that the Subcontractor's Work can be completed for the unpaid balance of the Subcontract Price has been resolved,
- (vi) any failure by Subcontractor to maintain progress satisfactory to Contractor in the prosecution of its Work has been resolved, and
- (vii) any other failure to comply with the Subcontract Documents has been corrected. Subcontractor shall deliver to Contractor a receipt on Contractor's standard form acknowledging such payment to be full satisfaction (except for retained percentage, if any) for all amounts owed or claims to be owed as a part of the Subcontract Price and under any change order for labor and material included in such application and Subcontractor's lienwaiver with respect thereto.

18(e) Contractor may also deduct from each progress payment any amount, including interest due thereon, then owed by Subcontractor to Contractor and not otherwise set forth as a bill in Subcontractor's progress payment application. Any amount owing at any time from Subcontractor or its sub-subcontractors to Contractor or Owner may be set-off against amounts due and payable by Contractor to Subcontractor. The interest rate shall be eight percent per annum unless otherwise required by law.

18(f) No payment of the Contract Price or any part thereof shall be deemed an acceptance of the Work covered thereby.

19. FINAL PAYMENT.

19(a) Subcontractor, promptly upon completion of its Work, shall deliver to Contractor its final payment application, which shall include a schedule of all materials furnished and Work properly completed but not paid for in prior progress payments, and of all amounts owed to Contractor not theretofore paid or deducted from prior progress payments, together with such sworn statements, material supplier's certificates and mechanic's lien waivers as Contractor deems necessary to protect Owner and Contractor against liens filed by Subcontractor's laborers, suppliers and sub-subcontractors in connection with the Work hereunder, and such evidence of payments by Subcontractor as Contractor may require.

19(b) Upon approval of such final application with such corrections therein as Contractor may require in order to reflect settlement of (i) all Subcontractor's claims for additional and changed work and for delays and damages, if any, with respect to which Subcontractor has complied with the requirements hereof, (ii) deductions from the Contract Price for eliminations from this Subcontract, and (iii) deductions or claims against Subcontractor by Contractor, Owner and other subcontractors, Contractor will make application to Owner for payment thereof as a part of the amount then owed to Contractor, and upon acceptance of the work by Owner and payment by Owner to Contractor of the balance so owed to Subcontractor (including any retained percentage theretofore withheld by Owner and paid to Contractor), Contractor will pay to Subcontractor the remaining net balance owed to it (including any retained percentage withheld by Contractor from progress payments) against receipt of Subcontractor's acknowledgment that said payment is in full satisfaction of all sums owed to it under this Subcontract, together with mechanic's lien waivers with respect thereto. If Contractor has not received the final payment from the Owner when payment to the Subcontractor becomes 90 days past due, Contractor agrees to make payment at that time from its own funds, unless otherwise stated in Section 1.

19(c) Subcontractor, upon demand, shall pay to Contractor any amount Contractor is required to pay (whether before or after final payment) to settle sums claimed to be owed by Subcontractor in connection with Work performed by it hereunder and to discharge any lien filed in connection therewith.

20. PAYMENTS BY SUBCONTRACTOR FOR LABOR AND MATERIAL.

20(a) Subcontractor shall pay promptly when due its labor, material, equipment and transportation costs and its sub-subcontractors. If Subcontractor does not pay the same as hereby required, then Contractor, with or without notice to Subcontractor, at its sole option, may pay the same and bill the cost to Subcontractor including any related costs such as attorneys' fees and an allowance for overhead and profit not to exceed 15% of the amount advanced.

20(b) If any liens are filed against the Construction Site or any amount payable to Contractor by the Owner or a claim is made against any bond posted by Contractor, arising from the Work of Subcontractor, Subcontractor promptly shall cause the same to be removed, and if it does not do so Contractor may take such action and make such payments as it may determine to be necessary or appropriate in order to remove such lien or claim, and bill the cost thereof to Subcontractor including any related costs such as attorneys' fees and an allowance for overhead and profit not to exceed 15% of the amount advanced. The preceding sentence shall be inapplicable to the extent that any lien or other claim results from Contractor's default in its payment obligations to Subcontractor, but Subcontractor must still comply with any restrictions concerning liens contained in the Prime Contract.

20(c) Even in the absence of claims being made against either of them or their bonds or property, if Contractor or Owner becomes involved in any dispute between Subcontractor and its sub-subcontractors or suppliers, including but not limited to being required to provide witnesses or to respond to subpoenas, whether or not Subcontractor is at fault in any such dispute and regardless of any court rules that would allocate costs differently, then Subcontractor shall be responsible for all resulting costs incurred by Contractor or Owner such as time expended by Contractor or Owner personnel (at reasonable billing rates) and all out-of-pocket costs. Subcontractor, upon Contractor's request, shall promptly furnish to Contractor satisfactory evidence as to the status of its accounts, including the names of all its sub-subcontractors and material suppliers, the original amounts of its contracts and the amounts paid and due thereon. Contractor's costs under this Section, including reasonable attorneys' fees and 15% markup for overhead and profit, may be billed to Subcontractor.

20(d) Subcontractor, upon Contractor's request; shall promptly furnish to Contractor satisfactory evidence as to the status of its accounts, including the names of all its sub-subcontractors, the original amounts of its subcontracts and the amounts paid and due thereon. Contractor shall have the right to audit the records and storage areas of Subcontractor and its sub-subcontractors at any time for the purpose of determining compliance with Subcontractor's obligations, such as, but not limited to, the status of work in process and the status of payments to sub-subcontractors and suppliers. Contractor, at its option and without assuming any responsibility to anyone to do so, may issue joint checks payable to Subcontractor and its sub-subcontractors and suppliers for that portion of any payment to Subcontractor which Contractor determines, in good faith, to be due to parties of a lower tier.

21. USE OF CONTRACTOR EQUIPMENT AND FACILITIES.

Subcontractor may, with Contractor's consent, use Contractor's equipment, public utility facilities, facilities for employees, and supplies, on an "as is" basis with Subcontractor assuming all risks and costs of such usage. Subcontractor agrees that Contractor may charge for such use in accordance with Section 16. Unless otherwise specifically provided in Section 29 or elsewhere in the Subcontract Documents, Contractor is not required to allow its equipment to be available to Subcontractor for any purpose.

22. CLEAN-UP AND PROTECTION OF WORK OF OTHERS.

22(a) Subcontractor shall keep the Construction Site and all streets, roadways and properties free from mud, rubbish, debris and obstructions caused by its operations (including surplus materials, crates and packing, etc. brought to the site by Subcontractor or by others for the benefit of Subcontractor), and shall complete its Work in such manner as to permit the next succeeding work to start without further cleaning.

22(b) Subcontractor shall not damage the work of others by its operations, and shall repair or pay the cost of repairing any such damage done by it or its sub-subcontractors, without waiving any right that Subcontractor may have to collect from any applicable builder's risk insurance. If builder's risk coverage is applicable to any loss caused by Subcontractor, Subcontractor shall remain responsible for the deductible and in case of multiple parties contributing to a loss or uncertain causes, Contractor shall make a reasonable allocation of the deductible among affected parties which shall be final.

22(c) Contractor may perform any such clean-up or repair work which Subcontractor fails to do promptly, and Subcontractor shall pay Contractor's cost thereof including any related costs such as attorneys' fees and an allowance for overhead and profit not to exceed 15% of the amount advanced.

22(d) On certain projects, Contractor provides dumpsters for use by all subcontractors. In that case, Subcontractor shall, on a daily basis, remove its trash from the construction area, deposit it in the dumpster, and break down all boxes, containers, etc. to maximize the space available in the dumpster. Only ordinary construction debris, excluding any hazardous waste, decommissioned Subcontractor equipment, etc., may be placed in the dumpsters.

23. SUBCONTRACTOR'S RESPONSIBILITY FOR ITS WORK AND MATERIALS.

23(a) Subcontractor promptly shall check all materials delivered at the Construction Site for its use, and shall immediately report all damages and shortages to Contractor. Subcontractor shall specifically alert Contractor to any conditions which could result in delays or claims as soon as such conditions are known to Subcontractor.

23(b) Subcontractor shall cover and at all times adequately protect its Work and materials from damage until final acceptance by Owner, and shall properly store and protect materials furnished to it by others.

23(c) Subcontractor shall be responsible for any damage to or destruction of its equipment and materials at the Construction Site and to its Work and materials incorporated in the structure, and at its expense shall replace, repair or restore any thereof which are destroyed or damaged. This provision shall not be deemed to restrict the right of Subcontractor to insurance proceeds payable by reason of any loss or damage insured against or to collect from any third party which is responsible for any such loss or damage, subject to any applicable waiver of claims or waiver of subrogation.

23(d) Unless otherwise provided in the Subcontract Documents, Contractor shall provide reasonable storage areas for Subcontractor on or adjacent to the Project site. If such storage areas are provided, Subcontractor shall relocate its materials and equipment as required by Contractor from time to time. Additional costs to the Subcontractor for relocation shall be reimbursable by Contractor only if Contractor's orders are unreasonable and the Subcontractor gives Contractor written notice of intent to make a claim before beginning any relocation for which the Subcontractor intends to claim compensation.

24. REJECTED WORK.

If Owner or Contractor, by notice to Subcontractor, rejects or orders to be removed and replaced any Work performed or materials furnished by Subcontractor which Owner or Contractor determine do not comply with the requirements of the Subcontract Documents, Subcontractor, within no later than the next working day, shall proceed to take down the rejected Work, remove the rejected materials from the Construction Site, repair (or pay the cost of repairing) damage to the work of others caused thereby, and replace the same with Work and materials complying with the Prime Contract. If Subcontractor does not commence such replacement work within the time required or does not diligently complete such removal and replacement, Contractor, by written notice, may take over the completion of such removal and replacement, and in such event, Contractor's costs, including reasonable attorneys' fees and a 15% markup for overhead and profit, shall be billed to Subcontractor.

25. SAFETY AND WORKING REGULATIONS.

25(a) Without limiting Section 5 hereof, Subcontractor shall comply with all requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 as amended and shall require its employees to work in harmony with others working at the Construction Site and to comply with

all governmental, Owner's and Contractor's regulations covering working conditions, and shall cease to employ at the Construction Site any employee upon notice from Contractor requesting Subcontractor to discontinue the employee's employment at the site.

25(b) Whether or not required by law or by other provisions of the Subcontract Documents, (i) Subcontractor shall require hard hats, safety glasses and shoes and high visibility clothing (unless not permitted by the Owner) to be worn at all times on the Project site by anyone working for or under or visiting Subcontractor, (ii) Subcontractor shall assure that fall protection measures (such as but not limited to personal fall arrest systems, safety net systems or guardrails meeting OSHA requirements) are in use whenever a fall hazard exceeding 6 feet exists for any worker under this Subcontract (including but not limited to workers involved in steel erection and roofing work); (iii) Subcontractor is required to comply with Contractor's Safety, Health and Environmental Requirements for Employees, Contractors, Suppliers (including but not limited to the Contractor Safety 4 Site Program, which forms part of the Subcontract Documents); and (iv) Subcontractor shall take special care to avoid damage to utility lines, whether indicated on the Drawings or not, and shall be responsible for contacting all applicable utility location services. If the Subcontract Documents state that any such safety measures are to be provided by Contractor or others, Subcontractor shall notify Contractor] if such measures are not in place when needed and shall not proceed with affected Work until all required safety measures are in use.

25(c) Any barricade or safety device removed by Subcontractor shall be replaced any time the safety hazard is left unattended by Subcontractor. Without assuming any responsibility to do so, Contractor may, without notice to Subcontractor, correct any safety hazard created or permitted by Subcontractor and bill Subcontractor for the costs of this work including any related costs such as attorneys' fees and an allowance for overhead and profit not to exceed 15% of the amount advanced.

25(d) If, during the progress of the Work, Subcontractor encounters what Subcontractor suspects to be, or should reasonably recognize as, hazardous materials (including, but not limited to, asbestos) at the Construction Site which are not anticipated by the terms of the Subcontract Documents, Subcontractor shall immediately stop Work in the affected area and notify Contractor of the existence and location of such materials.

25(e) Subcontractor shall defend and indemnify Contractor and the Owner against any cost or liability as a result of any failure to comply with this Section.

26. LABOR AND MATERIAL SUPPLY.

Subcontractor, within two working days after written notice from Contractor that it is not

- (i) employing such adequate number of properly skilled workmen and supervisors or
- (ii) using such adequate amount of equipment, or
- (iii) delivering to the Construction Site adequate amount of materials of the required quality as are necessary to enable Subcontractor to meet the time schedule or Contractor's directions,

shall increase its forces and take other effective measures, acceptable to Contractor, to rectify such failures. If Subcontractor does not comply with Contractor's directions in such notice, Contractor may provide such additional workers and supervisors, equipment and materials of the required quality (being Contractor personnel or through a separate provider engaged by Contractor) as it deems necessary for such purpose, and all costs incurred by Contractor for such purpose shall be billed to Subcontractor including any related costs such as attorneys' fees and an allowance for overhead and profit not to exceed 15% of the amount advanced. This Section does not limit Contractor's right to proceed under other provisions of this Subcontract (including Section 32) in any of such events.

27. LABOR AGREEMENTS.

27(a) If the Prime Contract includes a prevailing wage payment provision, then Subcontractor shall comply with all such requirements.

27(b) If Subcontractor's workers are involved in a jurisdictional dispute with other crafts, or Subcontractor's workers refuse to work at the Construction Site due to any other type of labor dispute or a picket line for any reason, Subcontractor shall immediately adopt all feasible measures (including but not limited to a separate gate) to avoid delay or disruption in Subcontractor's Work. If, in Contractor's judgment, Subcontractor's Work is adversely affected by such a dispute, Contractor may, if the issue is not resolved within three days after notice, terminate Subcontractor's right to proceed with the Work, in whole or in part, and invoke the provisions of Sections 32(c) and 32(d).

28. TERMINATION OF SUBCONTRACT OTHER THAN FOR DEFAULT .

28(a) If Contractor or Owner terminates the contract between them for any cause permitted thereby (except a default by Contractor), Contractor, by notice to Subcontractor, may terminate this Subcontract. Contractor may also terminate this Subcontract for convenience at any time by giving three days notice to Subcontractor. In either of such events, Subcontractor, as directed by Contractor, shall discontinue the Work, remove its equipment, materials and employees from the Construction Site and take such action as may be possible to terminate its agreements with its sub-subcontractors and to minimize its losses resulting from such termination.

28(b) Following termination under Section 28(a), Subcontractor shall promptly deliver to Contractor a statement covering the balance owed under this Subcontract for Work properly completed prior to the termination, unavoidable additional out-of-pocket costs for which it is liable by reason of such termination, and the reasonable profit to which it is entitled for completed Work only (no overhead or profit on unperformed work being payable), and Contractor, subject to its approval thereof, will pay it or, if applicable, include the same in its claim against Owner by reason of such termination. Subcontractor shall be responsible for proving the losses suffered by it and the profits to which it is entitled, and shall be responsible for any costs incurred by Contractor in presenting such claim. Upon settlement with Owner as to the amount to which Subcontractor is entitled by reason of the termination of the contract between Contractor and Owner and payment to Contractor of such amount, Contractor will pay to Subcontractor the balance, if any, to which it is entitled, less any bill or other sums owed by Subcontractor to Contractor, against the delivery by Subcontractor to Contractor of documents required by Section 19 to be filed before final payment, or Subcontractor shall pay to Contractor any net balance owed Contractor.

28(c) Subcontractor shall include a similar right of termination in its agreements with its own sub-subcontractors and require sub-subcontractors and material suppliers of every tier to include similar provisions in their agreements with others.

29. CORRECTION OF WORK AFTER FINAL PAYMENT.

Subcontractor shall correct any defects in its Work due to faulty workmanship by it or its sub-subcontractors or faulty materials and pay for all damage to other work resulting therefrom of which it is given notice not later than one year from the date of final payment by Owner or Contractor (or such other period as is required by the Subcontract Documents or by law), or in accordance with the terms of any warranty delivered or agreed to by Subcontractor as required by the Prime Contract. Subcontractor's warranty obligations shall continue after the foregoing correction period for the duration provided by the Prime Contract or by law.

30. CLAIMS FOR DAMAGES

30(a) Subcontractor hereby waives and releases Contractor from any claims which it has or claims to have at any time for damages or additional costs claimed to have been caused by an act or omission to act by Contractor unless Subcontractor delivers to Contractor:

- (i) notice with respect thereto not later than five days after the commencement of the alleged cause of such damage or additional costs,
- (ii) at intervals of not more than 15 days during the continuance of such cause, statements of the amount of such continuing damage or additional costs being suffered, and
- (iii) within five days after the cause thereof shall have ceased, a full accounting of the amount of such damage and additional costs claimed. If such notices are given and the parties do not agree to the amount to which Subcontractor is entitled by reason thereof within the period of 10 days after the making of such full accounting, either party may require that the claim be resolved as provided in Section 31.

30(b) Subcontractor shall file with Contractor similar notices with respect to any claims which it may have for damages or additional costs claimed to have been caused by Contractor's other subcontractors. Contractor shall have the right to require Subcontractor to settle the same directly with party claimed to be liable.

30(c) Subcontractor shall file with Contractor such notices as are required by the Prime Contract with respect to claims for damages and additional costs against Owner, Owner's representatives or Owner's other contractors and their subcontractors, and Contractor, to the extent provided by the Prime Contract, will deliver the same to Owner, but the prosecution of such claims shall be at Subcontractor's sole expense and Contractor shall not have any liability with respect thereto. Contractor, at Subcontractor's request, if permitted by the Prime Contract, will submit any such claim to arbitration.

30(d) Subcontractor waives all claims against Contractor and its personnel for consequential, incidental and other indirect damages arising from or related to the Subcontract or its termination (collectively "Consequential Damages"). If the Owner waives Consequential Damages against Contractor in whole or in part, then Contractor waives Consequential Damages against Subcontractor to the same extent.

31. DISPUTES.

31(a) Subcontractor, in connection with any disagreement involving interpretation of the Prime Contract; claimed inaccuracies, deficiencies or errors in the plans and specifications; deductions from and additions to the Contract Price and claims for additional time by reason of change orders or delays caused by others; or for additional costs or damages by reason of any act or omission of Owner or Owner's other contractors (other than Contractor and Contractor's other subcontractors), shall proceed strictly in accordance with any administrative remedies provided with respect thereto in the Prime Contract, and shall be bound by the administrative determinations, arbitration awards or judgments which are binding upon Contractor with respect to any such claims.

31(b) Subcontractor shall give Contractor adequate and timely notification with respect to any action which it desires Contractor to take on its behalf against Owner in connection with any such dispute, including, if provided by the Prime Contract, the submission of the same to arbitration, and shall be responsible for all expenses in connection with the presentation of any such claim. Contractor, at its election, may require Subcontractor to deposit with it a reasonable sum of money to protect it against any such costs. If any matter to be submitted to arbitration does not also involve Contractor, Contractor will designate such arbitrator(s) as Subcontractor requests. If the matter in dispute is required to be submitted to arbitration under the Prime Contract, Subcontractor shall be bound by the decision of the arbitrators as therein provided.

31(c) Any dispute between Subcontractor and Contractor which is not subject to the provisions of Sections 31(a) and 31(b) shall be resolved solely by recourse to the courts, unless the Prime Contract requires otherwise or Contractor determines to require prior mediation or to resolve the dispute by arbitration or both (any such arbitration or mediation shall be under administration of the American Arbitration Association or such other administrator named in the Prime Contract). Venue of any such litigation or arbitration shall be in a judicial district in which the Project is located, except that if any third-party litigation related to the Work is pending in another location, Contractor may require any related claims between Contractor and Subcontractor to be resolved in such other forum, unless otherwise required by law.

31(d) No dispute shall justify any cessation or delay in Subcontractor's Work, which Subcontractor shall continue to pursue diligently and Contractor shall continue to make all undisputed payments when due.

32. EFFECT OF DEFAULT BY SUBCONTRACTOR.

32(a) If Subcontractor fails

- (i) to maintain at the Construction Site a sufficient skilled work force, including supervisors, and sufficient equipment in good working order to meet the requirements of the Work, or
- (ii) to cause to be delivered to it at the Construction Site sufficient materials of the required quality to enable it to comply with its time schedule, or
- (iii) to meet the requirements of such time schedule, or
- (iv) to pay when due its laborers and sub-subcontractors, or
- (v) to comply with its obligations under any of its other agreements herein contained,

for the period of three days after written notice by Contractor specifying the failure complained of, Contractor, at any time while such failure continues, by notice to Subcontractor, or if Contractor elects termination for cause when it is an available remedy under terms of Contractor's Safety 4 Site Program, Contractor may terminate Subcontractor's right to proceed with the Work, in whole or in part. If Contractor gives notice of termination under this Section and it is subsequently determined that sufficient grounds do not exist for termination under this Section, then the termination shall be automatically converted, retroactively, to a termination for convenience, and Subcontractor shall have no claim against Contractor for the unjustified default termination except to recover the amounts, if any, that would have been payable to Subcontractor based on termination for convenience.

32(b) If Subcontractor seeks relief under Federal or state laws for the relief or protection of debtors, including the Federal Bankruptcy Code, or such proceedings are commenced against Subcontractor and not dismissed within thirty (30) days, or if Subcontractor makes an assignment for the benefit of creditors, has any of its property attached or seized under court order, or Contractor otherwise has reasonable grounds to believe that Subcontractor's performance may be substantially impaired, then Contractor, to the extent permitted by law, by notice to Subcontractor, may terminate Subcontractor's right to proceed with the Work, in whole or in part.

32(c) In the event of any such termination, Contractor shall have the right to finish the Work by whatever method it may deem expedient, including, without limitation, the taking over of Subcontractor's outstanding subcontracts and taking possession of and using in completing the Work Subcontractor's tools, equipment, scaffolding, materials and supplies at the Construction Site or in transit to or in connection with the Work.

32(d) In the event of any such termination, Subcontractor shall not be entitled to any further payment until the entire Work shall have been accepted by Owner, at which time Contractor shall pay to Subcontractor the excess, if any, of the balance of the Contract Price as adjusted over Contractor's cost of completion and all damages of Contractor and others resulting from such default, including but is not limited to reasonable attorneys' fees and related expenses incurred by Contractor as a result of Subcontractor's default and 15% markup for overhead and profit on all additional costs incurred by Contractor, against the delivery of release and other documents required hereunder for final payment, or Subcontractor shall pay to Contractor the excess of Contractor's costs of completion and any damages incurred by Contractor and others by reason of Subcontractor's

default over the balance otherwise owed on the Contract Price, promptly upon submission of bill for the same.

33. ASSIGNMENT.

Subcontractor shall not assign this Subcontract or sublet any part of the Work without prior written consent of Contractor. If Subcontractor does, with approval, assign this Subcontract or sublet any part of the Work, Subcontractor shall require that its assignee or sub-subcontractor be bound to it and to assume toward it all of the applicable obligations and responsibilities that it has assumed toward Contractor.

34. PATENTS AND ROYALTIES.

Subcontractor is responsible for all royalties and similar fees applicable to the Work. Subcontractor shall defend and indemnify Contractor and Owner against all claims for infringement of patents and other intellectual rights resulting from the products or methods used in the Work, unless Owner is responsible therefor under the terms of the Prime Contract. If Subcontractor believes that any design, process or product specified would be an infringement of a patent, Subcontractor shall immediately notify Contractor.

35. SOLE AGREEMENT.

The Subcontract Documents constitute the entire agreement between Subcontractor and Contractor and any modification thereof must be in writing. No course of dealing or industry practice shall be considered to excuse Subcontractor's performance or entitle Subcontractor to any additional compensation unless set forth in the Subcontract Documents as they may be amended.

36. EQUAL EMPLOYMENT OPPORTUNITY.

Without limiting Section 5 hereof, Subcontractor agrees to abide by and comply with all laws, procedures, rules and regulations with regard to non-discrimination issued or to be issued by any lawful authority insofar as they may apply to the Work covered by this Subcontract. This includes but is not limited to any utilization of disadvantaged business entities of any type or DBE-related reporting that may be required by the Prime Contract.

37. NOTICES.

Except as otherwise specifically provided, all notices, requests, demands and proposals given hereunder by either party shall be in writing and mailed by first class mail or delivered, if to Contractor, at its general or regional office stated at the beginning hereof, and if to Subcontractor to the address stated at the beginning hereof, or in either case, to such other address as may be furnished for such purposes.

38. DEFINITIONS.

Unless the context otherwise clearly requires, the following words and phrases shall have the following meanings:

38(a) "person" means and includes an individual, partnership, limited liability company, corporation or other entity;

38(b) "Contractor's other subcontractor" means any person who furnishes labor, materials, supplies or equipment for the performance or use in performance of any of the work to be performed by Contractor, pursuant to its contract with Owner, other than the Work to be performed by Subcontractor pursuant to this Subcontract;

38(c) "bills" are invoices, other than invoices for direct benefit work under Section 16, submitted by Contractor to Subcontractor. When used as a verb, "bill" means submit a bill. Bills shall be due and payable to Contractor upon presentation thereof to Subcontractor. Without limiting any other right or remedy, Contractor may offset and deduct any bills from the Contract Price and any amount then or thereafter becoming due to Subcontractor.

IN WITNESS WHEREOF, the parties hereto have caused this Subcontract to be executed by their authorized representatives as of the Effective Date.

SUBCONTRACTOR:

By:

Title:

Signature: _____

Date: _____

CONTRACTOR:

By:
Title:

Signature: _____

Date: _____

INSURANCE ADDENDUM

This Insurance Addendum (hereinafter, the "Addendum") is deemed to be, and is hereby made a part of, the Subcontract. To the extent that this Addendum conflicts with the Subcontract, the terms of the Addendum supersede the terms of the Subcontract and the terms of the Addendum control.

IMPORTANT NOTICE FOR OCIP AND CCIP PROJECTS:

If this Project involves an Owner-Controlled Insurance Program (OCIP) or Contractor-Controlled Insurance Program (CCIP) then Subcontractor, if eligible, must enroll, follow the other OCIP or CCIP Manual requirements, exclude from its billings to Contractor the costs of Subcontractor's usual coverages for Work on the Project site that are supplanted by the OCIP or CCIP, and provide evidence of the amount of such savings to Contractor or its program administrator upon request.

In addition, if the OCIP or CCIP covers Sub-subcontractors, Subcontractor must require its eligible lower-tier participants to enroll and to comply with the Manual requirements.

Even if Subcontractor is an enrolled OCIP or CCIP participant, Subcontractor must comply with all of the following terms for any Work performed off of the Project site, and for on-site Work for the types of coverage not provided by the OCIP or CCIP. The insurance coverages maintained by the Subcontractor shall not include a total wrap up exclusion.

I. INSURANCE COVERAGES. Prior to the commencement of any of the Work, Subcontractor shall purchase and maintain, and shall ensure all subcontractors of every tier purchase and maintain, insurance of the following types of coverage and limits of liability, to be maintained until completion of the Work or its final acceptance, and for such longer period of time as specified herein.

A. WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY

1. Subcontractor shall purchase and maintain workers' compensation insurance or coverage as required by statute in the state(s) in which the Work will take place.
 - i. If the Work will involve, in whole or in part, work or operations on the navigable waters of the United States or on a flagged vessel, then Subcontractor shall obtain coverage pursuant to the Jones Act and /or the Longshoremen's and Harbor Worker's Compensation Act as applicable.
 - ii. If Subcontractor leases one or more employees through the use of a payroll, employee management, or other similar company, then Subcontractor must procure worker's compensation insurance written on an "if any" policy form, including an endorsement providing coverage for alternate employer/leased employee liability. Such insurance shall be in addition to the workers' compensation coverage provided to the leased employee by the payroll, employee management, or other similar company.
2. Subcontractor shall purchase and maintain employer's liability insurance coverage with limits of at least \$1,000,000.00 for each bodily injury by accident, bodily injury by disease, and annual aggregate. To the extent that the Project or Work is located/performed in Ohio, employer's liability insurance coverage may be provided via endorsement to Subcontractor's commercial general liability insurance.

B. AUTOMOBILE LIABILITY

1. Subcontractor shall purchase and maintain automobile liability insurance provided on the current ISO form or equivalent with limits of at least \$1,000,000.00.
2. Coverage shall apply on an "any auto" basis (owned, non-owned, leased, hired, and borrowed) and include uninsured and underinsured motorist coverage; loading and unloading; and medical copays.
3. If the Work requires the removal and transportation of hazardous materials from the Project site, coverage must be amended to include pollution liability coverage applicable to bodily injury and property damage arising from all hazardous waste hauling, and include the CA 9948 and MCS90 endorsements.

C. COMMERCIAL GENERAL LIABILITY

1. Subcontractor shall purchase and maintain commercial general liability insurance

provided on the current ISO occurrence form, including coverage for damages because of bodily injury, property damage, personal and advertising injury, and for the products-completed operations hazard, with limits of at least \$1,000,000.00 each occurrence for bodily injury and property damage; \$2,000,000.00 general aggregate on a per project basis, and \$2,000,000.00 products-completed operations aggregate.

2. Without limiting the foregoing, coverage shall: (a) contain no professional liability exclusion broader than ISO form 22 79 07 98 or equivalent; (b) include no narrowing modification to or deletion of the standard definition of "insured contract"; and (c) contain no exclusion applicable to Subcontractor's scope of Work for the Project.
3. Coverage shall be maintained from commencement of the Work until not less than 10 years after substantial completion and acceptance of the Project, or to the expiration of any applicable Statute of Repose in the jurisdiction where the Project is located, whichever is shorter.

D. UMBRELLA/EXCESS LIABILITY

1. Subcontractor shall purchase and maintain umbrella/excess insurance in the amount of \$3,000,000-\$3,000,000 providing coverage excess to, and at least as broad as, the Commercial General Liability, Employer's Liability, and Automobile Liability insurance coverages detailed above, with limits pursuant to the amount above:
2. Coverage shall be maintained from commencement of the Work until not less than 10 years after substantial completion and acceptance of the Project, or to the applicable Statute of Repose in the jurisdiction where the Project is located, whichever is shorter.

E. CONTRACTOR'S TOOLS AND EQUIPMENT

1. Subcontractor shall purchase and maintain "all risk" property insurance on a replacement cost basis up to the full insurable value of the Equipment against all perils for its tools, personal property, and mobile equipment, scaffolding and forms, whether owned, or rented/leased (from Contractor or otherwise), and whether such property is located at the Project or in transit.
2. If the subcontractor has executed a Messer Equipment Rental Agreement for Managed Equipment Services, Subcontractor shall provide a Certificate of Property Insurance providing evidence of coverage for leased contractors' equipment for a minimum amount of \$250,000 naming Messer Construction Co. as a loss payee.

II. ADDITIONAL INSURANCE COVERAGES REQUIRED, IF ANY.

Prior to the commencement of the Work, Subcontractor shall purchase and maintain the insurance below if specified as applicable in the Subcontract, to be maintained until completion of the Work or its final acceptance, and for such longer period of time as specified herein.

CONTRACTOR'S POLLUTION LIABILITY

1. The Subcontractor shall provide an occurrence-based Contractor's Pollution Liability insurance with the following limits: \$1,000,000 per occurrence, claim or event, and \$1,000,000 annual aggregate.
2. This insurance shall include, without limitation, coverage for:
 - Liability to third parties for bodily injury, property damage, remediation, and clean-up costs arising from pollution events or conditions on, at, under, or migrating from the Project site and from transportation and disposal of pollutants and/or anything contaminated by pollution.
 - Defense costs arising from third-party claims due to pollution conditions or events;
 - Fines or penalties assessed by a government entity and costs of responding to a government entity investigation.
 - Emergency Costs.

- This insurance must include coverage for each of the following if excluded from coverage by Subcontractor 's Commercial General Liability insurance: mold; silica; asbestos; lead; chromate; sulfates; vapor, smoke, soot, dust, and fumes.
3. This insurance must be maintained for at least 10 years after substantial completion and acceptance of the Project.

PROFESSIONAL OR DESIGN LIABILITY

1. The Subcontractor shall provide professional liability insurance coverage with the following limits: \$1,000,000 per claim, and \$1,000,000 annual aggregate. Alternatively, fire protection subcontractors may provide design liability insurance coverage via endorsement to Subcontractor's commercial general liability policy.
2. This insurance shall include a retroactive date prior to the commencement of Work under the Contract.
3. This insurance must be maintained for at least 10 years after substantial completion and acceptance of the Project, or to the expiration of any applicable State of Repose in the jurisdiction where the Project is located, whichever is shorter.
4. When stamped drawings are required and Subcontractor is relying on another entity to provide the stamp and the professional liability insurance required by this Addendum, prior to executing the Subcontract, Subcontractor must notify the Contractor and obtain a copy of the Messer Professional Service Provider Insurance & Indemnity Agreement. Subcontractor is responsible for ensuring this form is executed by the service provider and submitted along with the professional liability insurance of the Engineer.

WATERCRAFT AND AIRCRAFT LIABILITY

1. The Subcontractor shall provide watercraft and/or aircraft liability insurance, as applicable, providing coverage which includes, but is not limited to, drones and helicopters, with limits of not less than \$1,000,000 per occurrence, including liability for bodily injury and property damage.
2. If watercraft liability insurance is applicable, such policy shall include pollution coverage, including coverage for clean-up costs, third-party property damage, assessment of and damage to natural resources, loss of revenues and profits by third parties, defense, investigation, and civil penalties, criminal fines and defense and interest.

RAILROAD PROTECTIVE.

1. The Subcontractor shall provide Railroad Protective Insurance with limits of not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate.

MARINE CARGO AND GOODS-IN TRANSIT INSURANCE.

1. The Subcontractor shall provide Marine Cargo and Goods-in-Transit insurance, providing coverage for property being shipped from a foreign point-of-origin overseas to the Project, with limits sufficient to cover the full replacement value of any delivery lost or damaged plus the shipping, and other transit and insurance costs of re -shipping or re-transporting the delivery to the extent that the Subcontractor is

responsible for the transit of the same.

STORED PROPERTY AND DOMESTIC TRANSPORTATION INSURANCE

1. The Subcontractor shall provide Stored Property and Domestic Transportation insurance, providing coverage for property in transit (domestically) to the Project, with limits sufficient to cover the full replacement value of any delivery lost or damaged plus the shipping and other transit and insurance costs of re-shipping or re-transporting the delivery to the extent.

that the Subcontractor is responsible for the transit of the same. In addition, if Subcontractor is storing property off of the Project site before delivery to the Project, Subcontractor must provide "all risk" replacement cost coverage for that property while in storage.

CRANE LIABILITY AND RIGGERS LEGAL LIABILITY INSURANCE

1. The Subcontractor shall provide Crane Liability and Riggers Legal Liability insurance, insuring against physical loss or damage to the property and/or equipment in the care, custody, or control of the rigger, with limits sufficient for replacements of such property and/or equipment.

III. GENERAL INSURANCE REQUIREMENTS. The following requirements are applicable to all of the insurance coverages required under this Addendum, except to the extent otherwise indicated.

- A. INSURER REQUIREMENTS.** Except for any state workers' compensation funds, each insurer providing insurance coverage as required in this Addendum shall be licensed, admitted insurer authorized to issue such coverage in the state in which the Project is located, and shall an A.M. Best rating of "A- X" or better. Contractor shall have the right to reject any insurance company selected by Subcontractor for reasonable cause.
- B. ADDITIONAL INSUREDS.** All insurance required by this Addendum (excluding workers' Compensation and Professional Liability insurance, where required) shall name the following parties as additional insureds: Owner, Contractor, Messer Construction Co. (if it is not the prime contractor), Related Entities, and each of their respective parents, members, affiliates, lenders, directors, officers, representatives, agents, and employees, all parties required to be indemnified by the Subcontract or Prime Contract, and all other parties reasonably requested by Contractor (hereinafter, collectively the "Additional Insureds"). All policies (including primary, excess, and/or umbrella) shall state that the insurance provided is primary and non-contributory to the additional insureds. With respect to the Commercial General Liability policy required under this Addendum, additional insured status must be provided on ISO forms CG 20 10 07 04 and CG 20 37 07 04, or their equivalent.
- C. SCOPE OF COVERAGES AND LIMITS OF INSURANCE.** The coverage provided to the Additional Insureds must be at least as broad as that provided to the first named insured on each policy. In the event that any policy provided in compliance with this Addendum states that the coverage provided to an additional insured shall be no broader than that required by contract, or words of similar meaning, the parties agree that nothing in this Addendum is intended to restrict or limit the breadth of such coverage. The limits of insurance stated above for each type of insurance are minimum limits only. If Subcontractor's policy provides greater limits, then the Additional Insureds shall be entitled to, or to share in, the full limits of such policy, and this Addendum shall be deemed to require such full limits.
- D. SEVERABILITY OF INTERESTS (CROSS LIABILITY)** No cross liability exclusions are permitted that apply to the Additional Insureds, and there may not be any restrictions in any policy that limits coverage for a claim brought by an additional insured against another named insured.
- E. WAIVER OF SUBROGATION.** To the fullest extent permitted by law, all insurance

Subcontractor furnishes in compliance with this Addendum shall include a waiver of subrogation in favor of the Additional Insureds.

- F. NOTICE OF CANCELLATION.** All policies required under this Addendum shall contain endorsements that confirm that said insurance policies shall not be cancelled, not renewed, or materially changed except upon thirty (30) days prior written notice to Contractor. If information concerning cancellation, non-renewal, or material change is not furnished by the insurer, Subcontractor shall, with reasonable promptness, provide Contractor with such information.
- G. DEDUCTIBLES & SELF-INSURED RETENTIONS.** Subcontractor shall be responsible for any deductible under any insurance it provides, and the coverage afforded to the Additional Insureds shall not be conditioned on the payment of any deductible or self-insured retention. Any deductible or self-insured retention in excess of \$10,000 must be approved by Contractor prior to the commencement of Work.
- H. CONTRACTOR'S RIGHT TO PROCURE INSURANCE.** In the event of a failure of Subcontractor to furnish and maintain any of the insurance required under this Addendum or to furnish satisfactory evidence thereof, Contractor shall have the right, but not the obligation, to procure such insurance on the Subcontractor 's behalf, and Subcontractor shall furnish all necessary information in connection with Contractor's procurement and either pay the costs thereof to Contractor immediately upon presentation of a bill, therefore, or have the cost thereof deducted from any payment otherwise due to Subcontractor under the Subcontract at Contractor's option.
- I. NO LIMITATION.** The insurance coverages maintained by Subcontractor shall not limit any Subcontractor's indemnity obligations or other liabilities under the Subcontract or the Prime Contract.
- J. NO TOTAL WRAP UP EXCLUSIONS.** The insurance coverages maintained by the Subcontractor shall not include a total wrap up exclusion.

IV. CERTIFICATES OF INSURANCE.

- A.** Prior to the Commencement of the Work, if the subcontractor has not already submitted a master certificate of insurance with blanket additional insured status, Subcontractor shall furnish the following to Contractor:
- 1.** A current Certificate of Insurance ("COI"), evidencing the requiring limits of insurance (including where applicable, per project limits). The certificate holder shall be identified as Contractor (as the entity indicated on the first page of the Subcontract). In addition, if requested by Contractor, additional COI 's listing the Owner or other Additional Insureds as certificate holders shall be provided.
 - 2.** A copy of the provisions(s) in the policies or endorsement adding the parties required by this Addendum to be added as additional insureds.
 - 3.** A copy of the provision(s) in the policies or endorsement providing that the insurance provided to the Additional Insureds include a per project aggregate limit.
- B.** **Such documents are required to be submitted to the Messer Business Portal at the following address: <https://messer.service-now.com/csm>**
- C.** Any renewals, changes in coverage, or replacements in coverage shall be similarly documented and forwarded at least ten (10) days prior to such renewal, change, or replacement. A COI evidencing continuation of coverages required to remain in force after final payment shall be submitted with the final application for payment as required in the Subcontract.
- D.** Upon request, Subcontractor shall also provide Contractor with a certified copy of any policy providing coverage required by this Addendum.
- E.** Failure to provide the COI and other required documentation will result in delayed payment to Subcontractor. Failure to provide the COI will not relieve Subcontractor of its responsibility to carry and maintain such insurance. Contractor is not obligated to review the COI and/or other documentation to ascertain compliance with this Addendum.

Contractor's failure to inspect such COIs and/or documentation, and/or failure to identify, object to, or otherwise notify Subcontractor of any discrepancy therein, is not a waiver of any requirements contained in the Subcontract or this Addendum, and will not waive Contractor's right to require strict compliance with the terms of Contractor or this Addendum.

V. NO WAIVER.

Any waiver or modification of the insurance requirements stated in this Addendum must be agreed to in writing by Contractor.

VI. CONFORMANCE TO LAW.

If applicable law limits the enforceability of any of the foregoing requirements, then Subcontractor shall be required to comply with the foregoing requirements to the fullest extent of coverage and limits allowed by applicable law and this Addendum shall be limited only to the extent required to conform to applicable law.

