

DRAFT AIA® Document A401™ - 2017

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

BETWEEN the Contractor:
(Name, legal status, address and other information)

Henry Carlson Construction, LLC
1205 W. Russell Street
Sioux Falls, SD 57104
Telephone Number: 605-336-2410
Fax Number: 605-332-1314

and the Subcontractor:
(Name, legal status, address and other information)

« »« »
« »
« »
« »

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: « »

with the Owner:
(Name, legal status, address and other information)

« »« »
« »
« »
« »

for the following Project:
(Name, location and detailed description)

« »
« »
« »

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

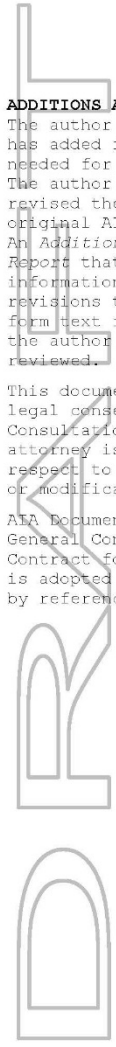
The Architect for the Project:
(Name, legal status, address and other information)

« »« »
« »

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference.



ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

AIA Document A401™ - 2017. Copyright © 1915, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1967, 1972, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This draft was produced by AIA software at 12:27:05 on 02/15/2018 under Order No.5162502126 which expires on 01/20/2019, and is not for resale.
User Notes: Error! Unknown document property name.

<< >>
<< >>

The Contractor and the Subcontractor agree as follows.

H
E
N
R
Y
C
A
R
L
S
O
N

TABLE OF ARTICLES

- 1 THE SUBCONTRACT DOCUMENTS**
- 2 MUTUAL RIGHTS AND RESPONSIBILITIES**
- 3 CONTRACTOR**
- 4 SUBCONTRACTOR**
- 5 CHANGES IN THE WORK**
- 6 CLAIMS AND DISPUTES**
- 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT**
- 8 THE WORK OF THIS SUBCONTRACT**
- 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- 10 SUBCONTRACT SUM**
- 11 PAYMENTS**
- 12 INSURANCE AND BONDS**
- 13 TEMPORARY FACILITIES, SERVICES, EQUIPMENT AND WORKING CONDITIONS**
- 14 MISCELLANEOUS PROVISIONS**
- 15 ENUMERATION OF SUBCONTRACT DOCUMENTS**

ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications to the Prime Contract, whether issued before or after the execution of this Agreement, in accordance with the provisions of Article 5; (4) other documents listed in Article 15 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement, in accordance with the provisions of Article 5. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein.

§ 1.2 The Subcontract Documents form the Subcontract for Construction. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications to the Prime Contract or Modifications to this Subcontract issued subsequent to the execution of this Agreement, appears in Article 15.

§ 1.3 Except to the extent of a conflict with a specific term or condition contained in the Subcontract Documents, the General Conditions governing this Subcontract shall be the AIA Document A201™-2017, General Conditions of the Contract for Construction. Reference to "Architect" in the Subcontract Documents shall only be applicable to the extent required by the Prime Contract.

§ 1.4 The Subcontract may be amended or modified only by a Modification to this Subcontract. A Modification to this Subcontract is a written amendment to this Agreement signed by both parties, or as otherwise described in, and in accordance with the provisions of, Article 5.

AIA Document A401™ - 2017. Copyright © 1915, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1967, 1972, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This draft was produced by AIA software at 12:27:05 on 02/15/2018 under Order No.5162502126 which expires on 01/20/2019, and is not for resale.
User Notes: Error! Unknown document property name.

§ 1.5 The Subcontract Documents shall not be construed to create a contractual or third-party beneficiary relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.6 The Contractor shall make the Subcontract Documents available to the Subcontractor prior to execution of this Agreement, and thereafter, upon request. The Contractor may charge the Subcontractor for the reasonable cost to reproduce the Subcontract Documents provided to the Subcontractor.

§ 1.7 The Subcontractor represents and agrees that it has carefully examined and understands this Subcontract and the other Subcontract Documents, that it has investigated the nature, locality, and site of the Work and the conditions and difficulties under which the Work is to be performed, and that it enters into this Subcontract on the basis of its own examination, investigation, and evaluation of all such matters and not in reliance upon any opinions or representations of the Contractor, or the Owner, or of any of their respective officers, agents, or employees.

§ 1.8 All of the Work shall be performed in accordance with all the Subcontract Document, including but not limited to the contract drawings and specifications and any addenda and modifications thereto, according to the true intent and meaning of the Subcontract Documents, including all labor, materials, and engineering incident thereto (unless otherwise expressly excluded), or as are usually performed or furnished in connection with such work, and regardless of whether the labor or materials hereby subcontracted are referred to under one or more headings in the specifications, it being the intention of the parties that all work usually performed by the trade(s) covered by this Subcontract and required by the Prime Contract shall be performed by the Subcontractor.

ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of AIA Document A201–2017 apply to this Agreement pursuant to Section 1.3 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities that the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies, and redress against the Subcontractor that the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights, remedies, and redress against the Contractor that the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern. The terms and provisions of this Agreement regarding the Work to be performed by the Subcontractor shall be in addition to and not in substitution for any of the terms and provisions of the Prime Contract and the other Subcontract Documents.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all Project matters requiring the Contractor's approval or authorization. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall render decisions in a timely manner and in accordance with the Contractor's construction schedule.

§ 3.2 Services Provided by the Contractor

§ 3.2.1 The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall review, and expedite written responses to, submittals made by the Subcontractor in accordance with Section 4.3 and Article 5. Promptly after execution of this Agreement, the Contractor shall provide the Subcontractor with copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Contractor shall promptly notify the Subcontractor of subsequent changes in the construction and submittal schedules and additional scheduling details.

AIA Document A401™ - 2017. Copyright © 1915, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1967, 1972, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This draft was produced by AIA software at 12:27:05 on 02/15/2018 under Order No.5162502126 which expires on 01/20/2019, and is not for resale.
 User Notes: Error! Unknown document property name.

(2036805494)

§ 3.2.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Except as previously agreed upon, additional costs to the Subcontractor resulting from relocation of such storage areas at the direction of the Contractor shall be reimbursed by the Contractor.

§ 3.3 Communications

§ 3.3.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, that affects the performance of this Subcontract and that becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.3.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.3.3 The Contractor shall permit the Subcontractor to request information directly from the Architect regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.3.4 If hazardous materials or substances are being used on the site by the Contractor, a subcontractor, or anyone directly or indirectly employed by them (other than the Subcontractor), and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the Contractor shall, prior to delivery to the Project site or exposure of the Subcontractor's employees to such material or substance, give notice of the chemical composition thereof to the Subcontractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.3.5 The Contractor shall promptly notify the Subcontractor of any fault or defect in the Work under this Subcontract or nonconformity with the Subcontract Documents.

§ 3.3.6 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein. If the Contractor does not have such information, the Contractor shall request the information from the Owner in accordance with Article 2 of AIA Document A201-2017 and promptly furnish the information received from the Owner to the Subcontractor.

§ 3.3.7 If the Contractor asserts a Claim against, or defends a Claim by, the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the Claim that relates to the Work of the Subcontractor.

§ 3.4 Claims by the Contractor

§ 3.4.1 The Subcontractor shall be responsible for liquidated damages to the extent provided for in the Subcontract Documents for delays caused, or contributed, by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, including all or a portion of any liquidated damages assessed by the Owner against the Contractor attributable in whole or in part to such Subcontractor-caused and/or -contributed delays. In addition, the Subcontractor shall be responsible for actual damages to the Contractor caused, or contributed, by the Subcontractor or any person or entity for whom the Subcontractor is responsible. In the event liquidated damages or actual damages, or both, are caused by the Subcontractor and another entity, the Contractor shall have the right to reasonably apportion said damages between the parties, and such apportionment shall be binding on the Subcontractor.

§ 3.4.2 The Contractor's Claims for the costs of services or materials provided due to the Subcontractor's failure to execute the Work shall require

- .1 five days' notice prior to the Contractor's providing services or materials, except in an emergency or when shorter notice is required to avoid unreasonable delay in the Project Schedule; and
- .2 written compilations to the Subcontractor of services and materials provided by the Contractor and charges for such services and materials no later than the fifteenth day of the month following the Contractor's providing such services or materials.

§ 3.5 Contractor's Remedies

If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, without prejudice to other remedies the Contractor may have, remedy such default or neglect and withhold, in accordance with Section 11.1.7.2, the reasonable cost thereof from current or future payments due the Subcontractor. If payments due to the Subcontractor are not sufficient to cover such amounts, the Subcontractor shall pay the difference to the Contractor. Contractor's other remedies, including those to withhold payment and for termination, are enumerated in other sections of this Agreement.

ARTICLE 4 SUBCONTRACTOR

§ 4.1 General

The Subcontractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Subcontractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Subcontractor shall designate in writing a representative who shall have express authority to act on the Subcontractor's behalf with respect to the Project. The term "Subcontractor" means the Subcontractor or the Subcontractor's authorized representative.

§ 4.2 Execution and Progress of the Work

§ 4.2.1 For all Work the Subcontractor intends to subcontract, the Subcontractor shall enter into written agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities that the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other that the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

§ 4.2.2 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in, or interference with the Work of the Contractor, other subcontractors, the Owner, or Separate Contractors. The Contractor shall have the right to reasonably modify the construction schedule, to suspend, delay, or accelerate, in whole or in part, the commencement or execution of the Subcontractor's Work, or vary the sequence thereof, without compensation to the Subcontractor, unless such compensation is provided for in the Prime Contract and Contractor first receives the same from the Owner. In the event such a delay, modification, or suspension extends the overall time of performance, which the Subcontractor did not cause or contribute to, the completion date for the Subcontractor's Work shall be extended per the terms of the Subcontract Documents and if Contractor first receives the same from the Owner.

§ 4.2.3 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment that may be in the course of preparation, manufacture, or transit.

§ 4.2.4 The Subcontractor agrees that the Contractor, Owner, and the Architect each have the authority to reject Work of the Subcontractor that does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.2.5 The Subcontractor shall pay for all materials, equipment, and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

§ 4.2.6 The Subcontractor shall take necessary precautions to properly protect the work of the Owner, Contractor, Separate Contractors, and other subcontractors from damage caused by operations under this Subcontract.

§ 4.2.7 The Subcontractor shall cooperate with the Contractor, other subcontractors, the Owner, and Separate Contractors whose work might affect the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors, the Owner, or Separate Contractors.

AIA Document A401™ - 2017. Copyright © 1915, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1967, 1972, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This draft was produced by AIA software at 12:27:05 on 02/15/2018 under Order No.5162502126 which expires on 01/20/2019, and is not for resale.
 User Notes: Error! Unknown document property name.

(2036805494)

§ 4.2.8 If any part of the Subcontractor's Work depends upon the work of the Contractor, any other subcontractor or any other Separate Contractor on the Project for proper execution or results, the Subcontractor shall inspect and promptly report to the Contractor any apparent discrepancies or defects in such work that renders it unsuitable for such proper execution and results. Failure of the Subcontractor so to inspect and report shall constitute an acceptance of the work of the Contract, other subcontractors, or other Separate Contractors as fit and proper to receive the Subcontractor's work. The Subcontractor shall not be responsible for damages, delays, or defects arising from any such discrepancies or defects that the Subcontractor timely reports to the Contractor if the Contractor fails to reconcile the discrepancies and correct the defects before the Subcontractor performs the Contractor's Work.

§ 4.2.9 Subcontract shall store materials and equipment at the Project site only in designated areas designated by Contractor. Subcontractor shall retain all risk of loss or damage of all materials stored at the Project site, shall be liable for any loss or damage to any work in place or to any equipment and materials on the Project site resulting from Subcontractor's Work, and waives all rights it might have against Contractor for loss or damage to Subcontractor's Work, property, or materials.

§ 4.2.10 Subcontract shall promptly pay for all labor, services, materials, and sales, consumer, use, and other similar taxes in connection with Subcontractor's Work and ensure that the Project remains free and clear of all claims, encumbrances, and liens relating thereto; and if Subcontractor fails to do so, Contractor may at its option and without notice to Subcontractor, pay any such unpaid amounts and charge the cost, including attorneys' fees, to Subcontractor.

§ 4.3 Submittals

§ 4.3.1 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples, and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

§ 4.3.2 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Subcontractor represents to the Contractor that the Subcontractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Subcontract Documents.

§ 4.4 Permits, Fees, Notices, and Compliance with Laws

§ 4.4.1 The Subcontractor shall give notices and comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.4.2 The Subcontractor shall comply with Federal, state, and local tax laws; licensing laws; immigration laws; social security acts; unemployment compensation acts; and workers' compensation acts, insofar as applicable to the performance of this Subcontract.

§ 4.5 Safety Precautions and Procedures

§ 4.5.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract. The Subcontractor shall comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, for the safety of persons and property, in accordance with the requirements of the Prime Contract. The Subcontractor shall notify the Contractor within three days of an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.5.2 If hazardous materials or substances are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors, or anyone directly or indirectly employed by them, and they are a type of hazardous material or substance of which an employer is required by law to notify its employees, the Subcontractor shall, prior to delivery to the Project site or exposure of the Contractor, other subcontractors, and other employers on the site to such

material or substance, give notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with the laws by the Contractor, other subcontractors, and other employers on the site.

§ 4.5.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and promptly report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay, and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.5.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 4.5.3 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 4.5.5 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Contractor, the Owner, consultants, other subcontractors, other Separate Contractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from (1) a material or substance brought to the site and negligently handled by the Subcontractor, including costs and expenses to remediate; or (2) where the Subcontractor fails to perform its obligations under Section 4.5.3, except to the extent that the cost and expense are due to the Contractor's fault or negligence.

§ 4.6 Cleaning Up

§ 4.6.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for conditions caused by other contractors or subcontractors.

§ 4.6.2 As provided under Section 3.4.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

§ 4.7 Warranty

§ 4.7.1 The Subcontractor warrants to the Owner, Architect, and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless the Subcontract Documents require or permit otherwise. The Subcontractor further warrants that the Work will conform to the requirements of the Subcontract Documents and will be free from defects, except for those inherent in the quality of the Work the Subcontract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect and Contractor, the Subcontractor shall provide satisfactory evidence as to the kind and quality of materials and equipment furnished or to be furnished. Subcontractor's workmanship warranty shall be for a period of one year after final acceptance or any longer period as required by the Prime Contract.

§ 4.7.2 In the event of repairs or replacements being necessary, and the need for repair or replacement is caused or contributed by the acts or omissions of Subcontractor or those over whom Subcontractor has control, Subcontractor agrees to commence the same within three (3) days after notice by Contractor. If Subcontractor fails to commence the same within three (3) days after notice by Contractor, Contractor may perform such work at Subcontractor's sole expense.

§ 4.7.3 All material, equipment, or other special warranties required by the Subcontract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with the Subcontract Documents.

§ 4.7.4 Neither final payment nor any provision in the Subcontract Document, nor partial or entire occupancy by the Owner or Contractor, shall constitute an acceptance of work not performed or completed in accordance with the Subcontract Documents or relieve the Subcontractor of liability with respect to any express or implied warranties or with respect to the responsibility for defects in materials or workmanship.

§ 4.8 Indemnification

§ 4.8.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but 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. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.8.

§ 4.8.2 In claims against any person or entity indemnified under this Section 4.8 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 4.7.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor, or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 4.9 Remedies for Nonpayment

§ 4.9.1 If the Contractor does not pay the Subcontractor undisputed amounts owed through no fault of the Subcontractor, within seven days from the time payment Contractor received payment from the Owner, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received.

§ 4.9.2 Notwithstanding anything in this Agreement or the Subcontract Documents to the contrary, Subcontractor agrees that all progress payments and final payment to Subcontractor are contingent upon and subject to Owner's acceptance of Subcontractor's Work and Contractor's receipt of payment from Owner for Subcontractor's Work. Payment by Owner shall be an express condition precedent of any obligation of Contractor to make any payment to Subcontractor. Subcontractor expressly agrees that it retains the risk of the owner's failure to pay the Contractor for Subcontractor's Work for any reason.

§ 4.10 Professional Services Provided by Subcontractor

§ 4.10.1 The Subcontractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Subcontract Documents or unless the Subcontractor is required to provide such services in order to carry out the Subcontractor's responsibilities for its own construction means, methods, techniques, sequences, and procedures. The Subcontractor shall not be required to provide professional services in violation of applicable law.

§ 4.10.2 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Subcontractor by the Subcontract Documents, the Contractor will provide all performance and design criteria that such services must satisfy to the extent the Contractor has received such performance and design criteria from the Owner and Architect under the terms of the Prime Contract.

§ 4.10.3 If professional design services or certifications by a design professional are required because of means, methods, techniques, sequences, or procedures required by the Contractor and related to the Work of the Subcontractor, the Contractor will provide all performance and design criteria that such services must satisfy.

§ 4.10.4 The Subcontractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the performance and design criteria received from the Contractor under this Section 4.10.

§ 4.10.5 The Subcontractor shall cause the professional services performed under this Section 4.10 to be provided by a properly licensed design professional, whose signature and seal shall appear on all Drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop drawings and other submittals related to the Work designed by such design professional shall bear the professional's written approval when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals, provided the Contractor has provided to the Subcontractor all performance and design criteria required by this Section 4.10. Approval by Contractor or Owner of any design work shall not relieve Subcontractor of responsibility therefor.

ARTICLE 5 CHANGES IN THE WORK

§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of a Modification to the Prime Contract issued subsequent to the execution of this Agreement, the Contractor shall promptly notify the Subcontractor of such Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by the Modification to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions, or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, with the Subcontract Sum and the Subcontract Time adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a Claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

§ 5.3 The Subcontractor shall make all Claims promptly to the Contractor for additional cost, extensions of time and damages for delays, or other causes in accordance with the Subcontract Documents. A Claim which will affect or become part of a Claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such Claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's Claim must be made. Failure of the Subcontractor to make such a timely Claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound. Receipt of additional costs, extensions of time, or other damages for delay shall be subject to Section 9.4 below. The Subcontractor shall proceed diligently with performance of all Work, including Work submitted in a Claim, and in accordance with the directions of the Contractor, pending resolution of any Claim.

ARTICLE 6 CLAIMS AND DISPUTES

§ 6.1 Mediation

§ 6.1.1 Claims, disputes, or other matters in controversy arising out of or related to this Subcontract, except those waived as provided for in Sections 6.4 and 11.3.2, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 6.1.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Subcontract and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 6.1.2, the parties may nonetheless proceed to the selection of the arbitrators(s) and agree upon a schedule for later proceedings.

§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

AIA Document A401™ - 2017. Copyright © 1915, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1967, 1972, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This draft was produced by AIA software at 12:27:05 on 02/15/2018 under Order No.5162502126 which expires on 01/20/2019, and is not for resale.
 User Notes: Error! Unknown document property name. (2036805494)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Section 6.1, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[« X »] Arbitration pursuant to Section 6.3 of this Agreement

[« »] Litigation in a court of competent jurisdiction

[« »] Other: (Specify)

« »

If the Contractor and Subcontractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction. The law of the state where the Project is located shall govern the terms of this Agreement, and the exclusive jurisdiction and venue for litigation shall be in the state or federal courts in the city and state where the Project is located.

§ 6.3 Arbitration

§ 6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. The arbitration should be conducted in the city and state where the Project is located, unless another location is mutually agreed upon. The parties agree that this Section 6.3, including but not limited to its enforceability, scope, and administration, shall be governed by the Federal Arbitration Act; the substantive and procedural law of the state with the Project is located shall govern in all other respects. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 6.3.2 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 6.3.3 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 6.3.4 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 6.3.5 Consolidation or Joinder

§ 6.3.5.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 6.3.5.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined

consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim, dispute, or other matter in question not described in the written consent.

§ 6.3.5.3 The Contractor and Subcontractor grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Contractor and Subcontractor under this Agreement.

§ 6.4 Waiver of Claims for Consequential Damages

The Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Subcontract, including without limitation, any consequential damages due to either party's termination in accordance with Article 7. Nothing contained herein shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of this Agreement.

§ 6.5 Continuation of Work and Payment

Pending resolution of any dispute, the Subcontractor shall continue performance of the Work in accordance with the Project schedule, and the Contractor shall pay undisputed amounts in accordance with this Agreement.

§ 6.5 Final Decisions

In the event of any dispute or claim between Contractor and Owner that directly or indirectly involves the Subcontractor's Work, or in the event of a dispute or claim between Contractor and Subcontractor that directly or indirectly involves a claim against the Owner for either additional compensation and/or an extension of time, Subcontractor agrees to be bound to Contractor and Contractor agrees to be bound to Subcontractor to the same extent that Contractor is bound to the Owner by the terms of the Prime Contract and by any and all decisions, findings, or determinations made thereunder by the person so authorized in the Prime Contract, or by an administrative agency, arbitrator, or court of competent jurisdiction, whether or not Subcontractor is a party to the proceedings before said person, agency, arbitrator, or court.

ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

§ 7.1 Termination by the Subcontractor

The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, the Subcontractor's Sub-subcontractors, or their agents or employees or other persons or entities performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, as well as reasonable overhead and profit on work not executed and costs incurred by reason of such termination.

§ 7.2 Termination by the Contractor

§ 7.2.1 Termination for Cause

If the Subcontractor (1) fails to prosecute the Work in a timely manner and with such diligence as will ensure timely completion and fails within a five-day period after receipt of notice to commence and continue correction of such failure to prosecute with diligence and promptness; (2) fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within a five-day period after receipt of notice to commence and continue correction of such default or neglect with diligence and promptness; (3) otherwise materially breaches any term of this Agreement and fails within a five-day period after receipt of notice to commence and continue correction of such materially breaches with diligence and promptness; or (4) becomes insolvent, files for voluntary or involuntary bankruptcy, or its assets are subject to receivership, the Contractor may, by notice to the Subcontractor and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed the unpaid balance of the Subcontract Sum, the Subcontractor shall pay the difference to the Contractor. In addition to the foregoing, the Contractor may terminate the Subcontract for the same reasons and circumstances, and in accordance with the same procedures, as the Owner may terminate the Prime Contract provided in the General Conditions of the Prime Contract. If a factfinder in litigation or an arbitrator in arbitration determines

that Contractor's termination under Section 7.2.1 was wrongful, the termination shall be converted to one for convenience under Section 7.3, and the Subcontractor shall be limited in its recovery strictly to the compensation provided for in Section 7.3.

§ 7.2.2 Termination for Convenience by the Owner

§ 7.2.2.1 If the Owner terminates the Prime Contract for the Owner's convenience, the Contractor shall promptly deliver notice to the Subcontractor.

§ 7.2.2.2 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work properly executed, costs incurred by reason of the termination, and reasonable overhead and profit on the Work not executed. In the event of the Owner's termination for convenience, receipt of payment by the Owner to the Contractor for such termination shall be a condition precedent to the right of the Subcontractor to payment for termination.

§ 7.2.2.3 Upon receipt of notice of termination, the Subcontractor shall

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

§ 7.2.3 Termination for Convenience by Contractor

The Contractor may at any time, without notice to the surety or sureties, terminate the Subcontract for the convenience of the Contractor, without articulating any reason and without any default under the Subcontract Documents. In the event of such a termination for convenience, and notwithstanding any other provision of the Subcontract to the contrary, provided the Subcontractor is not in default, the Subcontractor shall receive, as its entire and sole compensation, its actual, necessary, and reasonable costs of performing the Work to date of termination, as determined by audit of the Subcontractor's records, plus a reasonable markup for overhead and profit, but in no event shall such amounts paid and payable hereunder exceed the total Subcontract Sum.

§ 7.3 Suspension by the Contractor for Convenience

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay, or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum.

§ 7.3.2 The Subcontract Time and Subcontract Sum shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 7.3.1. Adjustment of the Subcontract Sum shall include profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent that

- .1 performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Subcontractor is responsible; or
- .2 an equitable adjustment is made or denied under another provision of this Subcontract.

If the Owner orders suspension, the Subcontractor shall be entitled to any adjustment in the Subcontract Time and/or the Subcontract Sum only to the extent the Contractor first receives an adjustment of the Contract Time and/or Contract Sum under the Prime Contract from the Owner.

§ 7.4 Assignment of the Subcontract

§ 7.4.1 In the event the Owner terminates the Prime Contract for cause, this Subcontract is assigned to the Owner pursuant to Section 5.4 of AIA Document A201-2017 provided the Owner accepts the assignment by notifying the Contractor and Subcontractor.

§ 7.4.2 Without the Contractor's written consent, the Subcontractor shall not assign the Work of this Subcontract, subcontract the whole of this Subcontract, or subcontract portions of this Subcontract.

ARTICLE 8 THE WORK OF THIS SUBCONTRACT

The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others. *(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications, and accepted alternates.)*

« »

ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 The date of commencement of the Subcontractor's Work, shall be:

(Check one of the following boxes.)

The date of this Agreement.

A date set forth in a notice to proceed issued by the Contractor.

Established as follows:

(Insert a date or a means to determine the date of commencement of the Subcontractor's Work.)

« See Exhibit K, and subsequent updated schedules by the project manager. »

If a date of commencement of the Subcontractor's Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 9.2 Subcontract Time

§ 9.2.1 The Subcontract Time is the period of time, including authorized adjustments, allotted in the Subcontract Documents for Substantial Completion of the Work described in the Subcontract Documents. The Subcontract Time shall be measured from the date of commencement of the Subcontractor's Work and may be amended from time to time.

§ 9.2.2 Subject to adjustments of the Subcontract Time as provided in the Subcontract Documents, the Subcontractor shall achieve substantial completion of the Subcontractor's Work:

(Check one of the following boxes and complete the necessary information.)

Not later than « » (« ») calendar days from the date of commencement of the Subcontractor's Work.

By the following date: « »

§ 9.2.3 Subject to adjustments of the Subcontract Time as provided in the Subcontract Documents, if portions of the Subcontractor's Work are to be completed prior to substantial completion of the Subcontractor's Work, then the Subcontractor shall achieve earlier substantial completion of such portions by the following dates.

(List all portions of the Subcontractor's Work required to achieve substantial completion of the Subcontractor's Portion of the Work.)

Portion of Work

Substantial Completion

See Exhibit K, and subsequent updated schedules by the project manager.

§ 9.2.4 If the Subcontractor fails to achieve substantial completion as provided in this Section 9.2, liquidated damages, if any, shall be assessed as set forth in Section 3.4.

§ 9.3 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

AIA Document A401™ - 2017. Copyright © 1915, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1967, 1972, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This draft was produced by AIA software at 12:27:05 on 02/15/2018 under Order No.5162502126 which expires on 01/20/2019, and is not for resale.
User Notes: Error! Unknown document property name.

§ 9.4 In the event the Subcontractor's Work is delayed or interfered with by acts or omissions of the Owner or others under its control, Subcontractor may submit a Claim for an extension of time or increase in the Subcontract Sum in accordance with Section 5.3. Subcontractor shall only be entitled to an extension of time, increased costs, and/or damages for such delays or interferences if Contractor first recovers or is granted the same from the Owner. To the extent the Subcontractor is delayed or interfered with by acts or omissions of Contractor, Subcontractor's sole and exclusive remedy shall be an extension of time. No extension of time and/or additional compensation will be valid without the Contractor's written consent after a Claim is made by the Subcontractor in accordance with Section 5.3.

ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor the Subcontract Sum in current funds for the Subcontractor's performance of the Subcontract. The Subcontract Sum shall be « » (\$ « »), subject to additions and deductions as provided in the Subcontract Documents. Further, Subcontractor expressly acknowledges that its right to receive payment is contingent upon and subject to Owner's acceptance of Subcontractor's Work and Contractor's receipt of payment from Owner for Subcontractor's Work.

§ 10.2 Alternates

§ 10.2.1 Alternates, if any, included in the Subcontract Sum:

Item	Price

§ 10.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Contractor following execution of this Agreement. Upon acceptance, the Contractor shall issue a Modification to this Subcontract: (Insert below each alternate and the conditions that must be met for the Contractor to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 10.3 Unit prices, if any:

(Identify and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)

§ 10.4 Allowances, if any, included in the Subcontract Sum:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price

ARTICLE 11 PAYMENTS

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Contractor by the Subcontractor, corresponding to Applications for Payment submitted by the Contractor to the Architect, and Certificates for Payment issued by the Architect, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Payments received by Subcontractor for Work properly performed by its contractors and suppliers shall be held by Subcontractor in trust for those contractors or suppliers who performed Work or furnished materials, or both, under contract with Subcontractor for which payment was made to Subcontractor by the Contractor.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

AIA Document A401™ - 2017. Copyright © 1915, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1967, 1972, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This draft was produced by AIA software at 12:27:05 on 02/15/2018 under Order No.5162502126 which expires on 01/20/2019, and is not for resale. User Notes: Error! Unknown document property name. (2036805494)

§ 11.1.3 Provided an Application for Payment is received by the Contractor not later than the « twentieth (20th) business » day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next Application for Payment which the Contractor is entitled to submit to the Architect. The Contractor shall pay the Subcontractor each progress payment no later than seven working days after the Contractor receives payment from the Owner, subject to Section 11.5. If the Architect does not issue a Certificate for Payment or the Contractor does not receive payment for any cause which is not the fault of the Subcontractor, the Contractor shall pay the Subcontractor, on demand, a progress payment computed as provided in Sections 11.1.7, 11.1.9, 11.1.10 and 11.2.

§ 11.1.4 If the Subcontractor's Application for Payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next Application for Payment submitted to the Architect.

§ 11.1.5 The Subcontractor shall submit to the Contractor a schedule of values prior to submitting the Subcontractor's first Application for Payment. Each subsequent Application for Payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require, and unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's Applications for Payment.

§ 11.1.6 Applications for Payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the Application for Payment.

§ 11.1.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Subcontract Sum properly allocable to completed Work;
- .2 That portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing; and
- .3 The amount, if any, for changes in the Work that are not in dispute and have been properly authorized by the Contractor, to the same extent provided in the Prime Contract, pending a final determination by the Contractor of the cost of changes in the Subcontractor's Work, even though the Subcontract Sum has not yet been adjusted.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of previous payments made by the Contractor;
- .2 The amount, if any, for Work that remains uncorrected and for which the Contractor has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017 for a cause that is the fault of the Subcontractor;
- .3 For Work performed or defects discovered since the last payment application, any amount for which the Contractor may withhold payment in whole or in part, as provided in Article 9 of AIA Document A201-2017, for a cause that is the fault of the Subcontractor; and
- .4 Retainage withheld pursuant to Section 11.1.9 of this Agreement.

§ 11.1.8 Acceptance of periodic progress payments by the Subcontractor shall constitute a waiver of any and all claims by the Subcontractor against the Contractor, the Owner, the Architect, the Contractor's Surety, the premises, or any payment bond unless such claims are expressly reserved on the face of the application for payment, or on the face of the affidavit and release, or on an attachment thereto. The Subcontractor shall furnish a periodic affidavit and release of claims form and a periodic lien waiver form acceptable to the Contractor and Owner.

§ 11.1.9 Retainage

§ 11.1.9.1 For each progress payment made prior to substantial completion of the Subcontractor's Work, the Contractor may withhold the following amounts as retainage from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

« % »

§ 11.1.9.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

« »

§ 11.1.9.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to substantial completion of the entire Work, including modifications for substantial completion of portions of the Subcontractor's Work as provided in Section 9.2.3, insert provisions for such modification.)

« »

§ 11.1.10 Upon the partial or entire disapproval by the Contractor of the Subcontractor's Application for Payment, the Contractor shall provide notice to the Subcontractor. If the Subcontractor disputes the Contractor's decision regarding a Subcontractor's Application for Payment in whole or in part, the Subcontractor may submit a Claim in accordance with Article 6. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld. Pending resolution of any dispute or Claim under this Section 11.1.10, the Subcontractor shall continue performance of the Work in accordance with the Project schedule, and the Contractor shall pay undisputed amounts in accordance with this Agreement.

§ 11.1.11 Provided the Contractor has fulfilled its payment obligations under the Subcontract Documents, the Subcontractor shall defend and indemnify the Contractor and Owner from all loss, liability, damage, or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any of the Subcontractor's subcontractors, suppliers, or vendors of any tier. Upon receipt of notice of such lien claim or other claim for payment, the Contractor shall notify the Subcontractor. If approved by the applicable court, when required, the Subcontractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 11.2 Substantial Completion

When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt Application for Payment for such Work. Within 30 days following issuance by the Architect of the Certificate for Payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

§ 11.3 Final Payment

§ 11.3.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a Certificate for Payment covering the Subcontractor's completed Work and the Contractor has first received payment from the Owner, subject to Section 11.5. If, for any cause which is not the fault of the Subcontractor, a Certificate for Payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within seven days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand.

(Insert provisions for earlier final payment to the Subcontractor, if applicable.)

« »

§ 11.3.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor, except those previously made in writing and identified by the Subcontractor as unsettled at the time of final Application for Payment.

§ 11.3.3 Acceptance of final payment by the Subcontractor shall constitute a waiver of any and all claims by the Subcontractor against the Contractor, the Owner, the Contractor's Surety, or the Architect.

§ 11.4 Interest

Payments due and unpaid under this Subcontract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

« » « »

§ 11.5 Pay If Paid

Notwithstanding anything in this Agreement or the Subcontract Documents to the contrary, Subcontractor agrees that all progress payments and final payment, as well as retainage, interest, and any other payment contemplated under Section 11 and this Agreement or the Subcontract Documents, to Subcontractor are contingent upon and subject to Owner's acceptance of Subcontractor's Work and Contractor's receipt of payment from Owner for Subcontractor's Work. Payment by Owner shall be an express condition precedent of any obligation of Contractor to make any payment to Subcontractor. Subcontractor expressly agrees that it retains the risk of the owner's failure to pay the Contractor for Subcontractor's Work for any reason.

ARTICLE 12 INSURANCE AND BONDS

§ 12.1 Subcontractor's Required Insurance Coverage

§ 12.1.1 The Subcontractor shall purchase and maintain the following types and limits of insurance, from a company or companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, as will protect the Subcontractor from claims that may arise out of, or result from, the Subcontractor's operations and completed operations under the Subcontract:

(Specify each type of insurance, such as commercial general liability, automobile, worker's compensation, employers' liability, professional liability, and pollution, required to be carried by the Subcontractor, the limits of coverage for each type of insurance, and any other pertinent requirements.)

Type of Insurance	Limits	Other Pertinent Requirements
See Exhibit B	See Exhibit B	See Exhibit B

§ 12.1.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Subcontractor's Work until the date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Prime Contract.

§ 12.1.3 If professional services are required under Section 4.9, the Subcontractor shall provide the professional liability insurance coverage required under this Section 12.1 for the following period after completion of the Work:

«See Exhibit B »

§ 12.1.4 Certificates of Insurance. The Subcontractor shall provide certificates of insurance acceptable to the Contractor evidencing compliance with the requirements in this Article 12 at the following times: (1) prior to commencement of the Subcontractor's Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Contractor's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and

AIA Document A401™ - 2017. Copyright © 1915, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1967, 1972, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This draft was produced by AIA software at 12:27:05 on 02/15/2018 under Order No.5162502126 which expires on 01/20/2019, and is not for resale.
User Notes: Error! Unknown document property name. (2036805494)

thereafter upon renewal or replacement of such coverage until the expiration of the time required in this Article 12. The certificates shall show the Contractor and the Owner as additional insureds on the Subcontractor's Commercial General Liability and any excess or umbrella liability policy.

§ 12.1.5 Deductibles and Self-Insured Retentions. The Subcontractor shall disclose to the Contractor any deductible or self-insured retentions applicable to any insurance required to be provided by the Subcontractor.

§ 12.1.6 Additional Insured Obligations. To the fullest extent permitted by law, the Subcontractor shall cause its commercial general liability coverage to include: (1) the Contractor, the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor and Owner as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions for which loss occurs during the Subcontractor's completed operations. The additional insured coverage shall be primary and non-contributory to any of the Contractor's and Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ 12.1.7 Notice of Cancellation or Change in Coverage. Within three (3) business days of the date the Subcontractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Subcontract Documents, the Subcontractor shall provide notice to the Contractor of such impending or actual cancellation or expiration. Upon receipt of notice from the Subcontractor, the Contractor shall, unless the lapse in coverage arises from an act or omission of the Contractor, have the right to suspend the Work in accordance with this Agreement until the lapse in coverage has been cured by the procurement of replacement coverage by the Subcontractor. The furnishing of notice by the Subcontractor shall not relieve the Subcontractor of any contractual obligation to provide any required coverage.

§ 12.2 Subcontractor's Required Performance Bond and Payment Bond

§ 12.2.1 The Subcontractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	
Performance Bond	

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

§ 12.2.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations under this Agreement, the Subcontractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 12.3 Contractor's Insurance and Bond Obligations

§ 12.3.1 The Contractor shall furnish to the Subcontractor certificates of insurance evidencing insurance coverage required of the Contractor under the Prime Contract.

§ 12.3.2 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.

§ 12.4 Property Insurance

§ 12.4.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project, to the extent copies of the policies are available to the Contractor. The Contractor shall notify the Subcontractor if the required property insurance policies are not in effect.

AIA Document A401™ - 2017. Copyright © 1915, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1967, 1972, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This draft was produced by AIA software at 12:27:05 on 02/15/2018 under Order No.5162502126 which expires on 01/20/2019, and is not for resale.
User Notes: Error! Unknown document property name. (2036805494)

§ 12.4.2 If the required property insurance is not in effect for the full value of the Subcontractor’s Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor’s Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 12.4.3 Property insurance for the Subcontractor’s materials and equipment required for the Subcontractor’s Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the Application for Payment process.

§ 12.5 Waivers of Subrogation

The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) the Owner, the Architect, the Architect’s consultants, and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work or to property at or adjacent to the Project site, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require similar written waivers in favor of the individuals and entities enumerated herein from the Subcontractor’s Sub-subcontractors, agents, and employees. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 12.5 shall not prohibit this waiver of subrogation, which shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 13 TEMPORARY FACILITIES, SERVICES, EQUIPMENT AND WORKING CONDITIONS

§ 13.1 The Contractor shall furnish and make the Contractor’s temporary facilities and services available to the Subcontractor at no cost, except as noted below:

«N/A »

§ 13.2 The Contractor’s equipment will be available to the Subcontractor only at the Contractor’s discretion and on mutually satisfactory terms, except as noted below:

«N/A »

§ 13.3 Specific working conditions as noted below:

(Insert any specific arrangements or requirements concerning working conditions and labor matters applicable to the Subcontractor’s Work.)

«See HCC Front Ends Dated _____ »

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

§ 14.2 The Contractor’s representative:

(Name, address, email address and other information)

« »
« »
« »
« »
« »
« »

§ 14.3 The Subcontractor’s representative:

(Name, address, email address and other information)

AIA Document A401™ – 2017. Copyright © 1915, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1967, 1972, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This draft was produced by AIA software at 12:27:05 on 02/15/2018 under Order No.5162502126 which expires on 01/20/2019, and is not for resale.
User Notes: Error! Unknown document property name. (2036805494)

<< >>
<< >>
<< >>
<< >>
<< >>
<< >>

§ 14.4 Notice

§ 14.4.1 Except as otherwise provided in Section 14.4.2, where the Subcontract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic notice is set forth in Section 14.4.3.

§ 14.4.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 14.4.3 Notice in electronic format, pursuant to Section 14.4.1, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203™–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

<<N/A >>

§ 14.5 Neither the Contractor’s nor the Subcontractor’s representative shall be changed without ten days’ prior notice to the other party.

§ 14.6 The invalidity of any provision of the Subcontract Documents shall not invalidate the Subcontract or its remaining provisions. If it is determined that any provision of the Subcontract violates any law or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case, the Subcontract shall be construed, to the fullest extent permitted by law, to give effect to the parties’ intentions and purposes in executing the Subcontract.

§ 14.7 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 14.7.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party’s sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 15 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 15.1 This Agreement is comprised of the following documents:

- .1 AIA Document A401™–2017, Standard Form Agreement Between Contractor and Subcontractor;
- .2 Prime Agreement between the Owner and Contractor, including all exhibits thereto;
- .3 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if not included in the Prime Agreement, dated as indicated below:

(Insert the date of the E203–2013 incorporated into this Agreement.)

<< >>

.4 Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement.)

- «Exhibit B – Insurance Requirements
- Exhibit C – W9 Form
- Exhibit D – Extra Work / Back Charge Form
- Exhibit E – Pay Application / Waiver of Lien
- Exhibit F – Harmony Clause
- Exhibit G – Jobsite Safety Rules
- Exhibit K – Project Schedule
- Exhibit S – Work Scope »

.5 Other documents:
(List other documents, if any, forming part of the Agreement.)

« »

This Agreement entered into as of the day and year first written above.

CONTRACTOR *(Signature)*

«Dave Derry »«Chairman »

(Printed name and title)

SUBCONTRACTOR *(Signature)*

« »« »

(Printed name and title)

EXHIBIT B – INSURANCE REQUIREMENTS

Exhibit B



REQUIREMENTS:

1) Insurance Companies and Certificates of Insurance:

- a) Insurance Coverage shall be provided by admitted carriers having at least an A.M. Best rating of no less than A- VIII (except for State Fund for Workers' Compensation coverage), or in the case of a non-admitted carrier, an A.M. Best rating of A or better and a financial capacity of X or better.
- b) Certificates of Insurance with a 30 day firm cancellation notice must be submitted on an ACORD 25 Form and shall be furnished by the Subcontractor to Contractor before any work is commenced hereunder by the Subcontractor. Please include Job Name and Number.
- c) All coverage must be Occurrence Basis and so stated on the certificate. Claims Made or Modified Occurrence coverage is not acceptable.
- d) The Certificates of Insurance shall be subject to approval of Contractor, but any acceptance of insurance certificates by the Contractor shall in no way limit or relieve the Subcontractor of the duties and responsibilities assumed by the Subcontractor in this Contract. Failure of Contractor to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Contractor to identify deficiencies from evidence that is provided shall not be construed as a waiver of Subcontractor's obligation to maintain such insurance.
- e) Allowance of any additional exclusions or coverage limiting endorsements is at the discretion of Contractor, and Subcontractor's bid shall be subject to adjustment to compensate for the existence of such exclusions.
- f) Payment may be withheld, at the option of the Contractor, until such certificates have been furnished, or, if upon receipt of a cancellation notice on a policy, under withdrawal of the notice or the reinstatement of the canceled policy.
- g) Subcontractor shall ensure that its Subcontractors, truckers, vendors, or suppliers of any tier shall maintain insurance in like form and amounts, including the Additional Insured requirements set forth below, and will, if requested, provide Contractor evidence of sub-subcontractors, truckers, vendors, or suppliers within ten (10) days of written request from Contractor or Owner.
- h) Failure of Subcontractor or its subcontractors, truckers, vendors, or suppliers to maintain the required insurance may result in termination of this subcontract agreement at Contractor's option.
- i) Copies of policies shall be furnished by Subcontractor, its subcontractors, truckers, vendors, or suppliers within ten (10) days of written request from Contractor or Owner.

2) Additional Insured and Primary Insured Endorsements:

- a) Under the Commercial General Liability policy the Subcontractor shall add the Contractor, its officers, directors and employees, and if required in the contract documents add the Project Owner as additional insured.
- b) The policy shall stipulate that the insurance afforded the Contractor as additional insureds shall apply as primary insurance. Any other insurance carried by the Contractor will be excess only and will not contribute with this insurance.
- c) The additional insured coverage as required herein shall include coverage for ongoing and completed operations and shall be provided for three years after final payment and shall be provided by an endorsement providing coverage at least as broad as Additional Insured endorsement form CG 2010 (04/13) and CG 2037 (04/13) as published by the Insurance Services Office (ISO); or an equivalent.

3) WORKER'S COMPENSATION and Employers Liability Insurance as required by any applicable law or regulation.

- a) Employers Liability Insurance shall be provided in amounts not less than:

\$100,000	Each employee for bodily injury by accident;
\$100,000	Each employee for bodily injury by disease;
\$500,000	Policy limit for bodily injury by disease.
- b) Waiver of Subrogation endorsement in favor of the Contractor and (if required by the contract documents) in favor of the Project Owner.

4) GENERAL LIABILITY Insurance, either Comprehensive General Liability or Commercial General Liability on coverage forms at least as broad as ISO occurrence form CG 0001.

- a) General Liability Insurance shall be provided in amounts not less than:

\$1,000,000	each occurrence Bodily Injury and Property Damage combined;
-------------	---

Revised April 2018

\$1,000,000 for Personal Injury Liability;
 \$2,000,000 Products & Completed Operations aggregate;
 \$2,000,000 General Aggregate, per Project.

If either defense costs are included in the General Liability Aggregate limit, or if the General Aggregate limit is not per project, then the required General Liability Aggregate limit shall be \$3,000,000. This additional limit can be provided by an excess/umbrella policy.

- b) Waiver of Subrogation endorsement in favor of the Contractor and (if required by the contract documents) in favor of the Project Owner.
 - c) "Claims Made" and "Modified Occurrence" policy forms are not acceptable.
 - d) Any self-insured retention or deductible greater than \$25,000 must be declared to Contractor at time of bid and approved by Contractor in writing.
- 5) UMBRELLA LIABILITY Insurance:**
- a) If higher limits or other forms of insurance are required by either the Owner or the Contractor, the Subcontractor will comply with such requirements. Subcontractors are required to have the following:
 - \$1,000,000 Combined single per occurrence;
 - \$1,000,000 General Aggregate, per Project;
 - b) Waiver of Subrogation endorsement in favor of the Contractor and (if required by the contract documents) in favor of the Project Owner.
 - c) Follow Form – Primary and non-contributory additional insured requirement in general liability.
- 6) AUTOMOBILE LIABILITY Insurance** on a coverage form at least as broad as ISO form CA 0001, including:
- a) Coverage on all owned, non-owned, and hired automobiles;
 - b) Waiver of Subrogation endorsement in favor of the Contractor and (if required by the contract documents) in favor of the Project Owner.
 - c) \$1,000,000 minimum Combined Single limit for bodily injury and property damage.
 - d) Subcontractor shall provide additional insured for the Contractor for auto-liability coverage.
- 7) PROPERTY Insurance:**
- a) Subcontractor shall be responsible for procuring and maintaining at its own expense property and equipment insurance for Subcontractor's tools and equipment.
 - b) **IF** Builders' Risk insurance is not provided by Project Owner or Contractor, Subcontractor shall purchase and maintain installation floater coverage written to cover all risks of physical loss except those specifically excluded in the policy, and shall insure at least against the perils of fire and extended coverage, theft, vandalism, malicious mischief and collapse. This insurance shall be written in an amount to provide full protection for Subcontractor's work on a replacement cost bases. Any deductible shall be the full responsibility of Subcontractor. Subcontractor waives all rights against Project Owner and Contractor for recovery of damages pursuant to Section c) below.
 - c) **IF** Builders' Risk Insurance purchased by the Project Owner(s) or Contractor provides coverage for Subcontractor for loss or damage to Subcontractor's work, Subcontractor shall be responsible for the insurance policy deductible amount, up to \$5,000 per occurrence.
- 8) PROFESSIONAL LIABILITY Exposure:**
- IF** work under this subcontract includes professional or design-build services, a \$1,000,000 Professional Liability Insurance Policy shall be carried by Subcontractor or its design professional. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to start of the project. Coverage must allow for reporting of claims for a minimum of **three (3) years** following completion of the project. However, if Project Owner or Contractor elects to purchase a project specific design policy, Subcontractor's policy will be endorsed to provide coverage once the design policy has been exhausted.
- 9) AIRCRAFT / HELICOPTER Insurance:**
- IF** the Subcontractor or their Subcontractors use any owned, leased, chartered, or hired aircraft of any type in the performance of this contract, they shall maintain aircraft liability in an amount of not less than \$10,000,000 per occurrence including Passenger Liability. Evidence of coverage in the form of a certificate of insurance shall be provided prior to the start of the project.
- 10) HAZARDOUS MATERIALS AND POLLUTION LIABILITY INCLUDING EIFS:**
- a) **IF** Subcontractor or their Subcontractor or suppliers of any tier are either required to perform remediation of hazardous materials as those terms are defined in federal, state, or local law or if their operations create an exposure to hazardous materials, they must, in addition to the above requirements, carry a "Contractor's Pollution Liability" policy with limits not less than \$1,000,000 per occurrence and not less than \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage, naming Contractor as Additional Insured for operations and completed operations. The status of Project Owner as an insured under a

Revised April 2018

CGL policy obtained in compliance with Section 2 of this Agreement shall not restrict coverage under such CGL with respect to the escape or release of pollutants at or from a site owned or occupied by or rented or loaned to Project Owner.

- b) **IF** Subcontractor or their subcontractors haul hazardous material (including, without limitation, waste), the policy must extend pollution coverage to the transportation of hazardous materials or pollutants by waste hauling vehicles. Such coverage requirement may be met through Subcontractor's or its subcontractor or suppliers Automobile Liability Policy pursuant to Paragraph 6 by providing coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48). If Subcontractor is subject to the Motor Carrier Act of 1980, the Motor Carrier Act endorsement MCS-90 must be obtained and attached to the policy.
- c) **IF** EIFS is included in the scope of work: Subcontractor will provide limits of liability insurance - \$1,000,000 per occurrence and not less than 2,000,000 aggregate for bodily injury and property damage naming contractor as an additional insured for both operations and completed operations coverage. Subcontractor required to carry completed operations coverage for three years from final payment and provide additional insured status for contractor for the same period and shall be provided for three (3) years following completion as noted in Section 2 of this Agreement.

11) RIGGERS Liability:

IF Subcontractor's work involves the moving, lifting, rigging, or hoisting of property or equipment Subcontractor shall carry Rigger's Liability Insurance to insure against physical loss or damage to the property or equipment.

12) Work Near RAILROADS:

IF Subcontractor (including any lower tier Subcontractor or supplier) performs any work or conducts any operations within fifty feet of any railroad (including any light rail, fixed rail, or other rail system), Subcontractor shall obtain an endorsement to its Commercial General Liability Policy to delete any exclusion, including the "Contractual Liability" exclusion, for work performed within fifty feet of a railroad. A copy of such endorsement shall be provided to Contractor prior to any work or operations by Subcontractor within fifty feet of any railroad.

13) OTHER Requirements:

- a) Any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Agreement including the duty to indemnify and hold harmless Contractor under other provisions hereof. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Subcontractor for liability in excess of such coverage nor shall it preclude Contractor from taking such other actions as is available to it under any other provision of the Agreement or law.
- b) Subcontractor shall be responsible for any deductible amount or any loss arising out of coverage denials by its insurance carrier(s).
- c) Should any insurance policy lapse or be canceled during the contract period, Subcontractor shall, prior to the effective expiration or cancellation date, furnish Contractor with evidence of renewal or replacement of the policy. Failure to continuously satisfy insurance requirements as herein provided is a material breach of contract. In the event Subcontractor fails to maintain any insurance coverage required, Contractor may, but is not required to, maintain such coverage and charge the expense to Subcontractor's work or terminate this contract.
- d) Subcontractor's obligations for loss or damage arising out of Subcontractor's work is in no way limited to the types or amounts of insurance set forth above. To the extent Subcontractor maintains insurance greater than these minimum requirements, Subcontractor agrees that such insurance shall be applicable to any of Subcontractor's liability obligations hereunder. In specifying minimum insurance requirements herein, neither Contractor nor Project Owner assert or recommend this insurance as adequate to Subcontractor's requirements. Subcontractor is solely responsible to inform itself of type or amounts of insurance it may need beyond these requirements to protect itself from loss, damage, or liability.

Revised April 2018

EXHIBIT C – W-9 FORM

<p>Form W-9 (Rev. November 2005) Department of the Treasury Internal Revenue Service</p>	<p>Request for Taxpayer Identification Number and Certification</p>	<p>Give form to the requester. Do not send to the IRS.</p>
<p>Print or type See Specific Instructions on page 2.</p>	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶ <input type="checkbox"/> Exempt from backup withholding	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	Henry Carlson Company 1205 W. Russell St. Sioux Falls, SD 57104
List account number(s) here (optional)		
Part I Taxpayer Identification Number (TIN)		
Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3.		
Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.		
Part II Certification		
Under penalties of perjury, I certify that:		
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3. I am a U.S. person (including a U.S. resident alien).		
Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the Instructions on page 4.)		
<p>Sign Here</p>	Signature of U.S. person ▶	Date ▶
<p>Purpose of Form</p> <p>A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.</p> <p>U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:</p> <ol style="list-style-type: none"> 1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued), 2. Certify that you are not subject to backup withholding, or 3. Claim exemption from backup withholding if you are a U.S. exempt payee. <p>In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.</p> <p>Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.</p> <p>For federal tax purposes, you are considered a person if you are:</p> <ul style="list-style-type: none"> • An individual who is a citizen or resident of the United States, • A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or • Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information. <p>Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.</p> <p>The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:</p> <ul style="list-style-type: none"> • The U.S. owner of a disregarded entity and not the entity, 		
Cat. No. 10231X		Form W-9 (Rev. 11-2005)
March 2009		

EXHIBIT D – EXTRA WORK/BACKCHARGE FORM

Exhibit D
Page 2 of 2

1205 W. Russell Street
Sioux Falls, SD 57104
605-336-2410, 605-332-1314 (fax)



GENERAL CONTRACTORS
Henry Carlson Construction LLC

00000000
This Number MUST appear
on all invoices

EXTRA WORK / BACKCHARGE FORM

Work performed by: _____ Job No. _____
Sub/Supplier Address/Phone # _____ Phase No. _____
_____ Date _____
Description of work _____

BACKCHARGE Yes / No (circle one) If Yes to whom: _____

Signature of Backcharged Subcontractor: _____

LABOR	Total Hours	TOTAL	
EQUIPMENT (Complete Description)	Total Hours	TOTAL	
MATERIALS AND OTHER ITEMS	Unit	Quantity	TOTAL

Comments:

The Above Record is Complete and Correct.

By _____ Subcontractor/ Supplier By _____ Henry Carlson Construction, LLC

* Signature acknowledges the actual quantity of labor, material, and equipment necessary to complete the scope of work detailed above

EXHIBIT E –PAY APPLICATION/WAIVER OF LIEN/PAYMENT PROCEDURES

GENERAL CONTRACTORS

Henry Carlson Construction_{LLC}**PAYMENT PROCEDURES**

To ensure prompt and easy payment to you for the work you do on this project, we ask that you follow the guidelines set out below. Following these steps will help prevent delays in payments to you.

1. All invoices must be submitted to Henry Carlson Company by the 20th of every month. If it is late, it will not be submitted to the Owner until the following month. Your invoices can be mailed, faxed or emailed.
2. All invoices must be submitted on the HCC Pay application (Exhibit E of your subcontract), along with a completed schedule of values that shows the different divisions you are performing.
3. All invoices must have the lien waiver portion completed with the County, State, and description of the project. (NOTE: this is the county and state the project is in, not where your office is located). All pay applications need to be signed and notarized. Pay applications will be rejected if this is not done.
4. HCC does not allow any change orders to be billed unless you have a Change Order from HCC showing the contract amount revised. If you bill for a change order that has not been written to your company, the pay application will be rejected and sent back to you for revisions.
5. Henry Carlson will submit billings to Owners from the 25th to the 31st of each month. Most owners have 30 days to pay and HCC will pay subcontractors within 7 days after HCC receives payment from owner.
6. TO GET PAID YOU MUST:
 - a. Have a signed/executed Contract on file with HCC
 - b. Have Current, signed/executed Change Orders on file with HCC
 - c. Have your pay application filled out properly
 - d. Have your Certificate of Insurance up to date and on file with HCC (For Subcontractors). Certificate of insurance must meet the requirements set forth in the contract.
 - e. If the job requires a Bond, HCC must have an original bond approved by HCC before payment is made.

If you do not meet these requirements, HCC will not – by the terms of the contract – pay you.

Exhibit E
Page 1 of 2

SUBCONTRACTOR'S APPLICATION FOR PAYMENT / LIEN WAIVER

TO: **HENRY CARLSON CONSTRUCTION**
FROM: _____ PROJECT: _____
PAYMENT REQUEST NO. _____ PERIOD: _____ to _____

STATEMENT OF CONTRACT ACCOUNT:

- 1. Original Contract Amount _____
- 2. Value of Approved Change Orders (As per attached breakdown) (Net) _____
- 3. Adjusted Contract Amount **(Line 1 + 2) =** _____
- 4. Value of Work Completed to Date: (As per attached breakdowns) _____
- 5. Value of Approved Change Orders Completed: _____
- 6. Materials Stored on Site: (As per attached breakdown) _____
- 7. Total to Date **(Line 4 thru Line 6) =** _____
- 8. Less Amount Retained (10.0%) _____
- 9. Total Less Retainage **(Line 7 - Line 8) =** _____
- 10. Total Previously Certified (Deduct) **(Line 9 from Previous Application)** _____
- 11. AMOUNT DUE THIS REQUEST **(Line 9 - Line 10)**

CERTIFICATE OF THE SUBCONTRACTOR:

I hereby certify that the work performed and the materials supplied to date, as shown on the above represent the actual value of accomplishment under the terms of the Contract (and all authorized changes thereto) between the undersigned and relating to the above referenced project.

I also certify that payments, less applicable retention, have been made through the period covered by previous payments received from the contractor, to (1) all my subcontractors (sub-subcontractors) and (2) for all materials and labor used in or in connection with the performance of this Contract. I further certify I have complied with Federal, State and local tax laws, including Social Security laws and Unemployment Compensation laws and Workmen's Compensation laws insofar as applicable to the performance of this Contract.

WAIVER OF LIEN

For good and valuable consideration, receipt of which is hereby acknowledged, the undersigned hereby waives and releases any and all mechanics' liens, claims or rights of liens and all rights acquired by the undersigned to file mechanics' lien or other liens or claims upon the real property situated in the County of Minnehaha State of South Dakota, described as: Above on account of labor or services performed at or materials furnished or delivered to the real property above described or any building, construction or improvement thereon by the undersigned to this date. This lien waiver is contingent upon receipt of the above referenced payment.

Date: _____
Subscribed and sworn before me this _____ day _____ Signature of Officer
of _____, _____ PRINTED NAME: _____
Notary Public: _____ TITLE: _____
My Commission Expires: _____ DATE: _____

March 2009

APPLICATION AND CERTIFICATE FOR PAYMENT, containing

Contractor's signed Certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use column I on contracts where variable retainage for line items may apply.

Application Number:

Application Date:

Period To:

A Item #	B Description of Work	C Original Scheduled Value	D Change Orders	E Revised Scheduled Value	F From Previous Application	G This Period	H Materials Presently Stored	I Total Completed And Stored	J %	K Balance To Finish
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
17										
18										
19										
20										
TOTALS										

March 2009

EXHIBIT F – HARMONY CLAUSE

GENERAL CONTRACTORS

Henry Carlson Construction^{LLC}

Exhibit F

HARMONY CLAUSE

It is understood that the contracts will be awarded and labor will be employed on the project herein described without discrimination as to whether employees of any contractor, subcontractor, or those employed by the owner of the project are members or non-members of any labor organization, and the subcontractor accepts this contract with that understanding.

Notwithstanding the provisions of the agreement, should there be a work stoppage caused by a strike, picketing, boycott or by 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 in the progress of construction, then upon twenty-four (24) hours written notice, the contractor shall have the right to declare the subcontractor in default of this understanding and agreement and take such steps as are necessary to finish the uncompleted portion of work. In such event the contractor shall have the right to take possession of and use all of the subcontractor's materials (exclusive of tools) intended for use on the work. The cost of completion shall be charged against the subcontractor's remaining interest in the contract price. If the subcontractor's remaining interest in the contract price exceeds the cost of completion, the subcontractor shall be entitled to the difference. If, however, the cost of the completion exceeds the subcontractor's remaining interest in the contract price, then the subcontractor agrees to pay the contractor such excess within thirty (30) days after written demand for such excess has been made upon him by the contractor.

March 2009

EXHIBIT G – JOBSITE SAFETY STANDARDS**EXHIBIT G - SAFETY****General Safety Policy and Requirements**

1. Safety in all Henry Carlson Construction operations is not just a corporate goal; it is a requirement.
2. Toward this end, HCC has formulated this written Safety exhibit and policy to govern the operations of all Subcontractors (including all employees, sub-subcontractors, and agents of Subcontractors) on HCC construction projects and jobsites. Subcontractor shall adhere faithfully to the requirements of this policy and exhibit, as well as the safety rules, instructions, and procedures issued in conjunction with it, while on HCC jobsites.
3. It is the policy of HCC to adhere to all applicable state, federal, and local codes and regulations in promoting a safe work place.
4. It is a condition of this Subcontract, and all Subcontracts issued by HCC, that all Subcontractors adhere to this policy and exhibit and the accompanying safety requirements. Failure to comply is a breach of the Subcontract.
5. All visitors, including but not limited to contractors, subcontractors, suppliers, owners representatives, agents of the architect or engineer, regulatory authorities, and insurance company representatives, shall be required to follow all safety rules and regulations in effect during their visit to the HCC jobsite operations. This includes, but is not limited to, OSHA regulations, HCC safety rules and policies, and HCC insurance company's loss control and safety rules and policies.
6. HCC and its Subcontractors will make every effort to ensure that the on-site operations do not endanger the safety of their employees. To this end, all on site personnel, from any trade, are required to report hazardous conditions and/or unsafe activities to the appropriate HCC officials.
7. The HCC Project Superintendents, Project Managers, Safety Director, Foremen, and Safety Committee Members have the full support of management in enforcing the provisions of this policy.

Safety Violation Enforcement

HCC, acting through its Superintendents, Project Managers, or the Safety Director, will provide Subcontractor with a written "Subcontractor Safety Warning Notice" of any safety violations/deficiencies on the jobsite by hand delivery to the Subcontractor's field

5988711v1

1
April 2017

lead persons and by hand delivery, U.S. Mail, faxed, or electronic delivery to the office of the Subcontractor to the attention of the party listed in the Subcontract.

Each violation of the HCC safety policy, as evidenced by a Subcontractor Safety Warning Notice, shall be an event of default and grounds for suspension or termination of the Subcontract under Article 7 of AIA Document A401. HCC's remedies for such default may include, without limitation, completion of the Subcontractor's work by HCC, withholding further payment to the Subcontractor until HCC completes such work, and withholding or recovering from Subcontractor any costs incurred by HCC completing Subcontractor's work.

Notwithstanding any cure periods otherwise allowed under the Subcontract, the Subcontractor must take immediate corrective action for all "Subcontractor Safety Warning Notices." HCC may withhold the payment to Subcontractor until Subcontractor corrects the safety violation.

Specific Safety Policies and Procedures

The following safety policies and procedures are required of all contractors, subcontractors, employees, and visitors on this project.

1. **Safety Regulations, Rules, and Policies** - All OSHA regulations, HCC safety rules and policies, and HCC insurance company's loss control and safety rules and policies shall be adhered to on this project and jobsite by all contractors, subcontractors, employees, and visitors. All subcontractors and contractors shall abide by all OSHA standards pertaining to construction sites with special emphasis on:

- Excavation and trenching
- Fall protection
- Scaffolding erection and use
- Forklift and man lift operation
- Electrical and proper GFI
- Personal protective equipment

Any potential hazards or procedures performed, which conflict with any of these regulations, safety rules, or policies, should be noted on the weekly inspection forms and corrected in a timely manner.

Failure of the contractor or subcontractor to be in compliance with OSHA standards on HCC jobsites which results in HCC sustaining any monetary penalties or fines shall be required to reimburse HCC for the amount of the fine plus twenty percent (20%) for administrative burdens.

2. **Personal Safety Equipment** – Use of hard hats is required at all times, on all jobsites until the completed project is turned over to the Owner or until the project superintendent, along with the Safety/Risk Manager determines that

overhead hazards are no longer present during the finishing phases of the project. Use of high visibility clothing (vest) and safety glasses are required at all times, by all workers on site until the completed project is turned over to the Owner.

3. **Weekly On-Site Inspections** – Representative employees from the contractors as well as all subcontractors on the jobsite may be required to perform an inspection of the job premises, perhaps as often as weekly, noting any potential hazards, safety concerns, or suggestions for improvements in safety related procedures. A standard form will be developed and used for this purpose with space for comments from all trades involved in the inspections. Corrective or proactive actions should be recommended and documented on the form.
4. **Hazardous Material Compliance** – In compliance with OSHA regulations, all contractors and subcontractors shall maintain proper documentation on all hazardous materials brought on site and comply with all OSHA HAZCOM procedures. If requested by the contractor, the subcontractor shall provide all HAZCOM information for review. Inadequate HAZCOM procedures must be upgraded to meet OSHA and industry standards. The Globally Harmonized System of Classification and Labelling of Chemicals sheets shall be maintained in a location that is accessible to other contractors who may want to review them.
5. **Cleanup and Housekeeping** – Subcontractor must maintain good housekeeping and shall perform cleanup of their work areas on a minimum of a weekly basis (more often if needed or requested by the HCC Superintendent or Project Manager) and shall remove all debris from his operations and place in dumpster per contract. If the subcontractor fails to perform cleanup, HCC may do so and charge actual cost plus twenty five percent (25%). Cleanup and good housekeeping are imperative to maintaining a safe jobsite for all. Any cleaning and/or maintenance which are deemed inadequate shall be noted on the weekly jobsite inspections and corrected by the Subcontractor in a timely manner.
6. **Security** – Subcontractor shall not allow unauthorized access to the jobsite. At all times, but especially during evening and weekend hours, Subcontractor shall maintain control over access to and use of the jobsite premises.
7. **Drug and Alcohol** – All Subcontractors, their personnel and sub-subcontractors are required to comply with the prohibition of the use, sale, or possession of drugs and/or alcohol on any and all HCC jobsites. HCC reserves the right to enforce the drug and alcohol free workplace policy on all contractors, subcontractors and visitors on the jobsite. The entry into or presence on company premises, facilities, or jobsites by any person is conditioned and constitutes consent upon the right of HCC to search the person, personal effects, vehicles, lockers, baggage, and jobsite quarters. These searches may include the use of electronic detection devices; scent trained dogs, or the taking of blood, urine, breath, or saliva samples for testing to determine the presence of alcohol or drugs. The employer/manager of any employee suspected of

“probable cause” will be notified that an employee may be in violation of this policy and the employer/manager and HCC will determine “probable cause” factors.

Should HCC and the employer of the employee have probable cause to suspect that an employee is in violation of this policy, the appropriate course of action will be discussed. If it is determined that the employee be drug/alcohol tested, cost of a test will be the responsibility of that employer. Any person found to be in violation of this policy, receiving a testing result of positive or refusing to submit to appropriate drug and/or alcohol testing is subject to disciplinary action up to and including immediate removal and future prohibition from HCC projects or jobsites.

In some cases the employee will not be allowed to work on HCC jobsites/property until the testing and resulting process is completed (i.e. DOT testing). HCC and the employer will make this decision based on job responsibility and function.

8. Henry Carlson Jobsite Safety Rules – Attached is a list of basic HCC jobsite safety rules. These rules are posted in jobsite trailers and shall be followed by all contractors, subcontractors, employees, and visitors. Subcontractor shall review these HCC Jobsite Safety Rules with any and all employees, visitors and agents who will be at this jobsite on behalf of or with the consent of Subcontractor. This shall include all personnel who come to the jobsite including delivery personnel or any personnel who are not regularly assigned to the jobsite.

See Attachments:

Subcontractor Safety Warning Notice
Henry Carlson Jobsite Safety Rules

Subcontractor Signature _____

Title _____

Date _____



GENERAL CONTRACTORS

Henry Carlson Construction LLC

Subcontractor Safety Warning Notice

**Notice to Subcontractor: This serves as notice per our
Subcontractor Agreement: Exhibit G – Safety**

Date _____

Subcontractor Being Warned _____

Subcontractor Foreman _____

HCC Supt _____ HCC Project Manager _____

Type of Violation:

- Unsafe Act
 - Unsafe Condition
 - Ignoring Directions or Previous Warnings
 - Not Performing Clean-up
 - Other _____
- Hardhat Violation
 - Safety Glasses Violation
- Pictures Taken

Nature of the Violation: _____

This Condition Must Be Corrected By (Date) _____

HCC Supt. Signature _____ Date _____

Subcontractor Foreman Signature _____ Date _____

- Send Copies to:
- Subcontractor’s Office (Person responsible for the job)
 - Subcontractor Foreman
 - HCC Safety Director
 - HCC Project Manager
 - HCC Superintendent

5
April 2017



Jobsite Safety Rules

General jobsite safety rules have been established to keep all safe and injury free. These rules apply to employee's subcontractors and suppliers. Become familiar with the below rules, ask questions and complete required training. In addition, work in strict conformance with federal, state, local and OSHA guidelines.

Hard Hats – Use of hard hats is required at all times, on all jobsites until the completed project is turned over to the Owner or until the project superintendent, along with the Safety/Risk Manager determines that overhead hazards are no longer present during the finishing phases of the project.

Safety Glasses – Use of safety glasses are required at all times, by all workers on site until the completed project is turned over to the Owner. Safety glasses must meet ANSI Z87 standards. Over the lens safety eyeglasses will be worn over employee-owned prescription glasses that do not meet industrial safety standards.

Dress Code - All jobsite workers are required to wear safety vests or highly visible clothing all times. A short-sleeved t-shirt or sleeveless t-shirt with seams and long pants is required at all times. No offensive writing is allowed on any clothing or hard hats. All clothing must fit properly and allow the worker to do their job safely. (No excessively baggy clothes or excessive tears in clothing are allowed). No jewelry that can catch on or in equipment during operation should be worn. Long hair should be secured in such a manner as not to entangle in equipment / tools being operated.

Footwear - Proper footwear is required on all jobsite. Inappropriate footwear will not be allowed (no tennis shoes). Footwear must have impact-resistant toe protection and soles must be puncture resistant. Certain projects may require steel-toed boots.

Additional Personal Protective Equipment – This would include, but is not limited to the use of hand protection (gloves), hearing protection (ear plugs, etc.), respirators, face shields, goggles, and whatever else may be required for a specific job.

Cell Phones - Employees are not permitted to carry personal cell phones onto the jobsite. Unless authorized by the superintendent, personal cell phones are to be used off the jobsite only.

Fall Protection - Fall Protection is **mandatory** any time there is exposure to a fall of 6' or more from an open side (10' or more on scaffolding). If unfamiliar with Personal Fall Protection equipment and / or practices – ASK YOUR SUPERVISOR.

Holes – Floor openings larger than a 2" diameter size must be covered, secured, color-coded / marked (i.e. "Danger" or "Hole"). Covers must be able to support twice the weight of any intended load in that area.

Scaffolding - All scaffolding must be set up properly including base plates (and mud sills if necessary), top-rail, mid-rail, and toe-boards. Scaffolding **must be inspected daily** by the designated competent person. **Know who your competent person is.** All scaffolding must have proper means of access to get on and off the scaffold. Climbing on the end frames is prohibited unless the end frame is designed to be an approved ladder.

Ladders and Stepladders - Ladders must be in good repair and used properly. Stepladders **must not** be leaned up against a wall and used like a straight ladder. Extension ladders must be properly tied off at the top to the structure by the person erecting the ladder and extended 36" above the top platform. If placed on slippery/uneven ground, also secure the bottom by staking or some other method.

Moving Equipment - Never stand or walk under suspended loads or between moving equipment. If equipment is being used in the work area, make eye contact with the operator before moving in its vicinity. Lower loads to ground level if at all possible. Never get on or off a moving vehicle or piece of equipment and do not allow others to do so.

Seatbelts – are to be worn at all times.

Scissor / Boom Lifts – Scissor lifts are considered moving scaffolding (OSHA Reg 1926.451) and operators must have a fall restraint system in place. Proper guardrail use is acceptable. Mid-rail chain shall be used whenever lift is occupied. Articulating or extensible boom operators are required to be "tied-off" at all times. Superintendents will authorize operators for Scissor/Boom lift use.

Power Tools, Machines, and Equipment – Perform daily inspections prior to using tools, machines and equipment. No modifications to the equipment including removal of shields, machine guards, interlocks and other safety devices should be made without written approval from the manufacturer. When inspecting, make certain that safety devices are operative and guards are in place before using. Do not operate unguarded equipment. Equipment powered electrically shall be properly grounded according to the manufacturer's recommended use. Load limits should not be exceeded. Use and maintain all equipment and safety devices properly.

Crane Signals – OSHA Cranes and Derricks Standard 1926.1400 requires use of qualified and authorized signal persons and riggers during all crane operations.

Spotters – Use spotters or competent persons when the worksite requirements demand it or if operator cannot see behind the equipment or vehicle when backing up.

Electrical – Proper LOCK OUT / TAG OUT procedures shall be observed. All electrical cords shall be in good repair, and properly grounded. All cords must be GFCI protected. Flat cords may only be used with temporary lighting. Frayed or damaged cords are not allowed on the jobsite. Company safety personnel have the authority to take faulty cords out of service by rendering them inoperable (cutting the ends off).

Hot Works – The Company superintendent will be notified of any Hot Work operations performed on the jobsite. Hot work permits are required and obtained at the Company project trailer. A fully charged fire extinguisher shall be in the immediate work area (recommendation is within 5' of the operator). Fire watchers may be assigned while work is being performed and for at least a half hour after completion of hot works activity. **HOT WORKS OPERATIONS SHALL NOT TAKE PLACE BEFORE THE HOT WORKS PERMIT IS COMPLETE AND PROPERLY FILED FROM THE HOST CLIENT AND REVIEWED BY THE PROJECT SUPERINTENDENT.**

Spills & Waste - Clean up spilled materials immediately. Spills of hazardous substances must be reported to the proper local, state, or federal agencies by your supervisor immediately. Dispose of trash and waste in approved or designated containers.

Weapons - The Company prohibits the possession or use of dangerous weapons on Company property as well as jobsites and Company related activities, unless it is an unloaded firearm customarily used for hunting and is locked out of sight in employee's parked vehicle. Dangerous weapons include firearms, explosives, knives and other weapons that might be considered dangerous or that could cause harm. Knives or other tools that maybe be considered dangerous in some instances, that are used for construction purposes, are exempt from this policy. A license to carry the weapon does not supersede Company policy.

Other OSHA compliancy and safety related issues should be addressed by contacting the Superintendent of the project.