



MJ SETTELEN CONSTRUCTION, LLC

MASTER SUBCONTRACT TERMS AND CONDITIONS

Contractor: MJ Settelen Construction, LLC (“MJS”)

Subcontractor:

Date:

Intending to be legally bound, MJS and Subcontractor hereby agree as follows:

1. Master Terms and Conditions. These Master Subcontract Terms and Conditions shall be applicable to and govern all labor, materials and work provided by Subcontractor under Work Orders issued by MJS to Subcontractor and accepted by Subcontractor. Capitalized terms used in these Master Subcontract Terms and Conditions without definition shall have the respective meanings given to them in the applicable Work Order.

2. Subcontract Documents. For each Project, the “Subcontract Documents” and “Subcontract” shall consist of: (a) the applicable Work Order, (b) these Master Subcontract Terms and Conditions, (c) the contract (the “Prime Contract”) between the Owner and MJS for the Project, including drawings, specifications, addenda and other documents forming a part thereof, and (d) any other special terms and conditions or other documents referred to in or attached to the applicable Work Order. Unless expressly incorporated into the applicable Work Order, Subcontractor’s bid, quotation or proposal is not part of the Subcontract Documents.

3. Owner; Architect. As used in these Master Subcontract Terms and Conditions: (a) the term “Owner” shall mean the party or parties with whom MJS has contracted under the Prime Contract for the Project, and (b) the term “Architect” shall mean the party or parties identified as the Project architect or design professional in the Prime Contract for the Project.

4. Subcontractor’s Responsibilities. Subcontractor shall fully and faithfully comply with the Prime Contract insofar as it relates to the Work and assumes all the obligations and responsibilities which MJS, by the Prime Contract, has undertaken toward Owner. MJS shall have the benefit of all rights, remedies and redress against Subcontractor which the Owner, under the Prime Contract, has against MJS. Upon Subcontractor’s request, MJS shall promptly make a copy of the Prime Contract available for review by Subcontractor.

5. The Work. Subcontractor shall furnish all labor, materials, supplies, equipment, tools, permits, fees and licenses required for the prompt and efficient performance and completion of the scope of work identified on the Work Order, all necessary attendant and ancillary work and all work usually considered within the scope of its activities (the “Work”).

6. Site Investigation. Subcontractor acknowledges and agrees that it has taken all steps necessary to ascertain the nature and location of the Work and the Project site, and that it has investigated and satisfied itself as to the general and local conditions that may affect the Work or its cost.

7. Scheduling. Time being of the essence hereunder, Subcontractor shall begin, prosecute and complete the Work at the times and in the sequence directed by MJS and in accordance with any schedules issued by MJS or the Owner from time to time during the Project. If Subcontractor shall at any time fail to meet, or fall behind, the then current schedule required by MJS or the Owner, or if in MJS's opinion, Subcontractor is delaying the progress of the Project, then, at MJS's request, Subcontractor shall, at its own cost, perform such overtime work or otherwise expedite its performance as may be necessary to keep abreast with the general progress of the Project or meet the requirements of the applicable Project schedules, at no cost to MJS or the Owner.

8. Payments.

(a) By executing a Work Order, Subcontractor acknowledges and agrees that, prior to executing the Work Order, it has received a copy of the payment provisions contained in the Prime Contract.

(b) On or before the 25th day of each month, Subcontractor shall submit to MJS a monthly invoice for progress payment in the actual amount of labor performed and/or material and equipment delivered and installed during the month less 10% retainage, which shall be in a form acceptable to MJS and be supported by such information, certificates and documents as MJS shall require. MJS will not be obligated to make payment for stored equipment or materials. Invoices not received by the 25th day of the month may not be processed for payment until the following month.

(c) Subcontractor's right to receive each progress payment or final payment is conditioned on: (i) Subcontractor's completion of the Work for which the payment is requested; (ii) Subcontractor's submission of an invoice in a form acceptable to MJS; (iii) if required by MJS, a partial release and waiver of liens, or in the case of final payment a final release and waiver of liens, in a form acceptable to MJS; (iv) Subcontractor shall have strictly complied with every term and condition of the Subcontract; and (v) Subcontractor's submission of such other documentation as MJS may reasonably require.

(d) MJS may withhold or deduct from any payment due Subcontractor such amounts as MJS, in its reasonable discretion, deems appropriate, including, without limitation, on account of: (a) Subcontractor's Work that is deemed defective, deficient, incomplete or otherwise not strictly complying with the Subcontract Documents by the Owner, Architect or MJS; (b) back charges under Section 20 hereof; (c) actual or potential claims for bodily injury or property damage; and/or (d) any other claim which MJS may have against Subcontractor relating to the Project, other projects on which Subcontractor is a subcontractor to MJS, or otherwise.

(e) Subject to the terms and conditions of this Section and the terms and conditions of the Subcontract Documents, MJS shall make payment to Subcontractor on account of Subcontractor's monthly invoices for progress payments, less applicable retainage, within 14 days following MJS's receipt of payment from the Owner for the Work included in Subcontractor's monthly invoice. MJS will pay retainage to Subcontractor within 14 days following MJS's receipt of payment for such retainage from the Owner; provided, however, that if the Owner is not withholding retainage from MJS, MJS will pay retainage to Subcontractor

within 14 days following the satisfaction of the conditions precedent to Subcontractor's right to final payment set forth in this Section.

(f) Notwithstanding anything in the Subcontract Documents to the contrary, MJS shall never be obligated to pay Subcontractor under any circumstances, unless and until payment is received by MJS from Owner in full, less any retainage, for the Subcontractor's Work for which Subcontractor has submitted an application for payment or for which Subcontractor is otherwise seeking payment. This is a condition precedent to any payment obligation of MJS and shall not be construed as a time of payment clause. Subcontractor acknowledges and agrees that this clause shifts the risk of non-payment by Owner for Subcontractor's Work to Subcontractor, and Subcontractor waives all right to commence litigation or arbitration unless and until payment is made by Owner to MJS. This clause applies to progress and final payments, retainage payments, payment for change order work and extras, delay and other claims, and all other payments to be made by MJS to Subcontractor. If MJS has provided payment or performance bonds, the obligation of MJS and its surety under any of these bonds to make any payment (whether a progress or final payment) to a claimant on that bond or bonds is similarly subject to the express condition precedent of payment by Owner.

(g) No payment made to Subcontractor shall be evidence of the satisfactory performance of the Subcontract or the Work by Subcontractor, either in whole or in part, and no payment including final payment shall be construed to be an acceptance of defective Work or improper materials, nor shall use or occupancy by the Owner constitute acceptance of the Work or any part thereof. Acceptance by Subcontractor of final payment shall constitute a complete and unconditional release of any claims or demands by Subcontractor against MJS relative to the Work or the Project, whether known or unknown. If MJS fails to make payment to Subcontractor in accordance with the Subcontract, interest on such unpaid balances shall accrue at the rate of 6% per year from the date due.

(h) Subcontractor shall promptly pay for all materials and labor used in, or in connection with, the performance of the Work, and furnish satisfactory evidence when requested by MJS to verify such payment. Subcontractor shall promptly notify MJS of Subcontractor's intention to withhold payment to any sub-subcontractor, supplier, materialman or laborer, and Subcontractor shall not include any such amount in an application for payment until the reason for withholding payment has been resolved and Subcontractor is prepared to pay such subcontractor, supplier, materialman or laborer.

(i) MJS may make payment to Subcontractor by checks made payable jointly to Subcontractor and Subcontractor's sub-subcontractors, materialmen, labor, and suppliers. If Subcontractor fails to promptly pay, when due, for labor, fringe benefits, services, materials or equipment furnished in connection with the performance of the Work, or fails to make other payments required by this Subcontract, MJS may make such payments directly to the subject creditor and recover the amount thereof from Subcontractor or deduct such payments from amounts otherwise due Subcontractor.

9. Taxes. The Subcontract Price includes, and Subcontractor shall pay or cause to be paid, all federal, state and local taxes and all other taxes and fees applicable to the Work or to labor or materials to be furnished under the Subcontract, including, without limitation, permit and inspection fees and sales, use and personal property taxes. Subcontractor shall also pay or cause to be paid for persons employed by Subcontractor in connection with the Work all contributions, payments, taxes and deductions for social security, old age retirement benefits, unemployment insurance and annuities, pension, welfare fund, and any other

payments required by any labor union or by any governmental authority, and all withholding taxes measured by or related to wages, salaries or other compensation paid to such persons.

10. Changes in the Work.

(a) MJS, without invalidating the Subcontract, and without notice to any surety, may order extra work or make changes by altering, adding to or deducting from the Work or accelerating the Work ("Change Order Work"). All Change Order Work shall be executed under the terms and conditions of the Subcontract. Subcontractor shall not proceed with any Change Order Work except upon execution by MJS of a written Change Order.

(b) Any Change Order Work, or any other work which Subcontractor claims is beyond the original scope of the Work of the Subcontract, which is performed by Subcontractor without a written Change Order shall be considered as having been performed as part of the original scope of the Work of the Subcontract, without additional charge to MJS or to the Owner, and Subcontractor waives any claim with respect thereto. Subject to the foregoing, the Subcontract Price shall be adjusted on account of such Change Order Work as may be agreed upon by MJS and Subcontractor prior to the commencement of the Change Order Work. If MJS and Subcontractor are unable to reach agreement on the adjustment to the Subcontract Price, Subcontractor shall continue to perform the Change Order Work without delay, if so directed by MJS, and the Subcontract Price shall be adjusted by an amount equal to the actual, reasonable cost to the Subcontractor of performing the Change Order Work, as determined upon completion of the Project by the dispute resolution procedure set forth in Section 22 hereof, and pending such determination, Subcontractor shall not include such Change Order Work in its monthly invoices for progress payments.

11. Manner of Performance of the Work.

(a) Clean Up. Subcontractor shall at all times keep the Project site free from accumulation of waste material and rubbish resulting from its operations, and on a daily basis and upon completion of the Work, Subcontractor shall center pile all rubbish and debris resulting from the performance of the Work.

(b) Layout; Field Measurements. Subcontractor shall be responsible for all laying out and location of the Work. Prior to commencing the Work, and as necessary during the performance of the Work, Subcontractor shall verify field measurements and the previous work of other trades to determine the suitability of the same for the acceptance of Subcontractor's Work. Subcontractor's failure to immediately notify MJS of discrepancies shall constitute a waiver of claims relating to such discrepancies.

(c) Compliance With Laws. Subcontractor shall observe, comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the performance of the Work and shall secure and pay for all permits, governmental fees, licenses and inspections which are legally required at any time during the performance of the Work, unless otherwise provided in the Work Order.

(d) Coordination and Protection of Work. Subcontractor shall cooperate with and coordinate its Work with the work of MJS and the other subcontractors, vendors and suppliers on the Project. As requested by MJS, Subcontractor shall participate in the preparation of coordinated drawings, specifically noting and advising MJS of potential conflicts between Subcontractor's Work and the work of MJS and the other

subcontractors, vendors and suppliers on the Project. Subcontractor shall take all necessary precautions to properly protect the work of others from damage caused by Subcontractor's operations, and shall be solely responsible for the repair of any such damage. Subcontractor shall furnish continuous and effective protection at all times for its Work in place and all materials stored for use under the Subcontract, and Subcontractor shall be solely liable for all loss and/or damage of any kind to such Work or materials at any time prior to final completion and the Owner's final acceptance thereof.

(e) Submittals. Subcontractor shall prepare and submit all submittals, including, without limitation, shop drawings, product data and samples, as required by MJS, the Architect and/or the Subcontract Documents. Approval of submittals will not relieve Subcontractor of its obligation to perform the Work in strict accordance with the requirements of the Subcontract Documents and the Subcontract.

(f) Safety. Subcontractor shall take all necessary safety precautions with respect to the performance of the Work, shall comply with safety measures initiated by the Owner or MJS and shall comply with all applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons or property, including, without limitation, O.S.H.A. rules and regulations in effect at the time the Work is performed. Subcontractor shall report any injury to an employee or agent of Subcontractor occurring at the Project site to MJS immediately and in no event later than the end of the shift during which the injury occurred.

12. Correction of Work. Subcontractor shall within 24 hours following notification, diligently proceed to correct all Work rejected by MJS, the Owner or the Architect as deficient, defective, improper or otherwise failing to conform to the requirements of the Subcontract and/or the Subcontract Documents, whether observed before or after substantial completion and whether or not fabricated, installed or completed. Subcontractor shall bear all costs of correcting such rejected Work, including costs and expenses paid or payable by MJS. Subcontractor shall also be responsible for the repair of the work of others damaged by or during the correction of Subcontractor's rejected Work. The correction of all non-conforming or defective work shall be completed by Subcontractor within 10 days following notification.

13. Labor. Subcontractor and its lower-tier sub-subcontractors shall not employ anyone in the Work whose employment may be objected to by MJS or the Owner, and shall not employ labor, means, materials or equipment which may cause strikes, work stoppages or any disturbances by labor employed by Subcontractor, MJS, other contractors or subcontractors, or in connection with Subcontractor's Work or the Project or the location thereof. Subcontractor agrees to become signatory to and be bound by any project labor agreement entered into by MJS for the Project. Subcontractor agrees that all disputes as to jurisdiction of trades shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect either nationally or in the locality in which the Work is being performed.

14. Warranty and Guarantee of Work. Subcontractor warrants that all materials and equipment furnished and/or provided under the Subcontract will be new unless otherwise specified in the Subcontract Documents, and that the Work will be of excellent quality, free from faults and defects and in full conformance with the requirements of the Subcontract Documents. This warranty is not limited by the Subcontractor's obligation to remedy defects set forth below and in Section 12 above and shall survive any termination of the Subcontract. Nothing contained herein shall be deemed to exclude or modify warranties, express or implied, provided by law, or any extended period of warranty provided by any third party. In addition to, and not in limitation of, the warranty set forth above, Subcontractor shall, at its own expense, promptly remedy any defect in workmanship, equipment or materials provided or furnished under the Subcontract, provided written notice

of such defect is received by Subcontractor within one (1) year of Subcontractor's acceptance of final payment hereunder, or for such longer period as may be required by the Subcontract Documents and/or Prime Contract. Subcontractor shall obtain all manufacturer's warranties required by the Subcontract Documents.

15. Lien Free Project. To the fullest extent permitted by law, Subcontractor, for itself and its subcontractors, vendors, material suppliers and all other persons acting for, through, or under it, agrees that they shall not file or maintain any mechanics' or construction liens or claims against the Project, or any buildings or real estate forming any part thereof, for or on account of any work or labor done or materials furnished by them or any of them under the Subcontract, or any Change Order, amendment or modification hereto, or any supplemental contract, or contract for extra work or otherwise. To the fullest extent permitted by law, Subcontractor hereby waives and releases any right it may have to file any such mechanics' or construction liens or claims. The agreement, waiver and release set forth in this section shall be an independent covenant which shall survive the expiration or termination of the Subcontract. Should any lien be filed or created in violation of the provisions of this section, Subcontractor shall cause the immediate removal thereof and, if then approved by MJS, Subcontractor shall remove such lien by obtaining and filing, at its own expense, a bond satisfactory in form and amount acceptable to MJS and in accordance with all applicable legal requirements. Said bond shall be obtained and filed within five (5) days after the date on which MJS provides Subcontractor with notice of such lien or claim.

16. Delays. If Subcontractor in any way causes delay in the progress of the Work or MJS's work or the Project so as to cause any damage to MJS or to cause any damages for which MJS shall become liable, including, without limitation, liquidated damages for delay or lost profits, Subcontractor shall be liable to MJS for any such damages. If Subcontractor is delayed in the prosecution or completion of the Work by the intentional act, neglect or default of the Owner, MJS or any other party, or by any damage caused by fire or other peril for which Subcontractor is not responsible, or by war or natural disaster, then Subcontractor shall submit a claim in writing to MJS within 72 hours of the commencement of the cause of such delay. If Subcontractor submits such a claim, and if MJS receives from the Owner an extension of the time for the completion of the Work on account of such delay, then the time for the completion of the Work shall be so extended. Regardless of the cause, nature or duration of a delay, Subcontractor shall not be entitled to an extension of the time for completion of the Work unless Subcontractor submits a claim for delay and the Owner grants an extension of time, as set forth above. Such an extension of time shall be Subcontractor's sole and exclusive remedy for such delay, and Subcontractor shall not be entitled to monetary compensation or damages of any kind as the result of any delay regardless of the cause, nature or duration thereof.

17. Indemnification.

(a) To the fullest extent permitted by law, Subcontractor shall indemnify, defend, and save harmless MJS, MJS's surety, Owner, the Architect and all other persons or entities MJS is required to indemnify under the Prime Contract, and the officers, directors, shareholders, employees and agents of each of them (each an "Indemnitee" and collectively, the "Indemnitees") from and against the entire amount of any and all claims, losses, damages (including without limitation any liquidated damages under the Prime Contract), penalties, fines and expenses (including without limitation, reasonable attorneys' fees) arising from or relating to any breach of the Subcontract by Subcontract or Subcontractor's Work or the presence of Subcontractor or a Responsible Party on the Project site, or otherwise occurring in connection therewith, regardless of whether the same is caused in whole or in part by the negligence, gross negligence, recklessness or other act or omission of an Indemnitee or the party to be indemnified. It is the intent of MJS and Subcontractor that this Section shall

operate to absolve and protect the Indemnitees from any and all loss by reason of the performance of Subcontractor's Work.

(b) Such indemnification, defense and hold harmless obligation shall include, without limitation, matters arising from or relating to: (i) the acts or omissions of Subcontractor, its sub-subcontractors, suppliers, consultants or design professionals, or anyone employed by any of them or anyone for whose acts or omissions they may be liable (each a "Responsible Party" and collectively, the "Responsible Parties"), (ii) infringement of patents or violation of patent rights by Subcontractor or any other Responsible Party, (iii) any damage to or delay in the prosecution of the work on the Project of MJS, any subcontractor or any other person or entity arising from or relating to the acts or omissions of Subcontractor or any other Responsible Party, (iv) any damage or injury to persons or property, including without limitation, to a Responsible Party, Subcontractor's Work, the Project or adjoining property, (v) any liens filed against the Project relating to Subcontractor's Work, (vi) the failure of Subcontractor or any other Responsible Party to comply with any federal, state or local law, regulation or ordinance, (vii) any damages or injury to persons or property, including without limitation Subcontractor's Work, the Project or adjoining property, in any manner arising out of Subcontractor's or any other Responsible Party's use of MJS's equipment, and (viii) provision of professional design services, certifications, and/or approvals (if any) by or behalf of Subcontractor or a Responsible Party in connection with Subcontractor's Work.

(c) In any and all claims against an Indemnitee by an employee of Subcontractor or any other Responsible Party, the indemnification and defense obligations of Subcontractor under this Section shall not be limited in any way by the provisions of any workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts, and Subcontractor hereby waives such provisions. Subcontractor expressly waives immunity under any applicable workers' or workmen's compensation act.

(d) Subcontractor shall defend the Indemnitees against any claim which may potentially give rise to indemnification of an Indemnitee by Subcontractor, even if such claim alleges that the Indemnitees are wholly or partially at fault for causing the damage or loss. If indemnification for the Indemnitees' sole negligence is expressly prohibited by law, such defense shall continue until it is conclusively established by a court or panel of arbitrators having competent jurisdiction that: (i) an Indemnitee is solely liable for causing the damage or loss alleged; and (ii) that neither Subcontractor nor any Responsible Party is liable, at which time the liable Indemnitee will absorb all further costs of defense.

18. Insurance; Bonds.

(a) Subcontractor shall procure and maintain insurance policies meeting the requirements set forth in Exhibit A to these Master Subcontract Terms and Conditions; provided, however, if the Prime Contract requires more extensive or greater insurance coverages, Subcontractor shall procure and maintain insurance policies meeting the requirements of the Prime Contract.

(b) If Subcontractor should subcontract any of Subcontractor's Work to a third party, Subcontractor shall also require that such third party procure and maintain insurance policies meeting the requirements set forth in Exhibit A to these Master Subcontract Terms and Conditions. A third party's obtaining the required insurance shall in no manner lessen or affect Subcontractor's obligations or liability as set forth herein or otherwise imposed by law.

(c) If requested by MJS or Owner at any time during performance of the Work, Subcontractor shall furnish a Performance Bond and a Labor and Material Payment Bond each acceptable to MJS. If such bonds are not required by the Subcontract Documents, MJS shall reimburse Subcontractor for the reasonable cost of such bonds.

19. Default. If Subcontractor at any time should: (a) refuse or neglect to supply sufficient skilled workers or materials of the proper quality and quantity; (b) fail in any respect to prosecute the Work with promptness and diligence; (c) cause by any action or omission the stoppage or delay of or interference with the work of MJS, or any other contractor or subcontractor on the Project; (d) fail to make prompt payment for all labor, materials, equipment, or supplies furnished by or through Subcontractor; (e) fail to execute the Work in strict conformance with the Subcontract Documents; (f) breach any of the terms or conditions of the Subcontract Documents; (g) in the judgment of MJS be unable to complete the Work within the time required for completion of the Work or be unable to complete the Work for the remaining balance of the Subcontract Price; (h) fail to comply with or meet the requirements of the then current Project schedule; or (i) become the subject of a case under the United States Bankruptcy Code or become bankrupt or insolvent or go into liquidation either voluntarily or under an order of a court of competent jurisdiction or make a general assignment for the benefit of creditors or otherwise acknowledge insolvency, then Subcontractor shall be in default under the Subcontract, and MJS shall have the right and remedies set forth in Section 20 hereof and such other rights and remedies available to it at law or in equity.

20. Remedies for Default.

(a) Upon Subcontractor's default under the Subcontract, MJS shall have the right upon 3 days prior notice to Subcontractor, to provide whatever labor, equipment or materials MJS deems necessary for the completion of Subcontractor's Work, or any part thereof, which Subcontractor has failed to complete or perform, and charge the cost thereof to the Subcontractor, who shall be liable for the payment of same including reasonable overhead, a 15% markup, and attorneys' fees, or to deduct the cost thereof from any monies then due or thereafter to become due to Subcontractor. The notice, once given, shall continue to be in effect until the Work which is the subject of the notice has been fully completed, even though Subcontractor has acted under the notice but has failed to continue to do so on an uninterrupted and timely basis with sufficient labor, materials and equipment until the complete performance of the Work.

(b) MJS shall also have the right immediately upon the expiration of said notice period, and without further notice to Subcontractor, to terminate the Subcontract and/or to take possession (and for this purpose Subcontractor does hereby assign title thereto) of the materials, tools and equipment at the Project site, and cause the entire remaining Work to be finished and the materials therefore to be furnished by another subcontractor, or as it deems fit; and Subcontractor shall not be entitled to any further payment until all the Work specified in the Subcontract shall be finished, at which time, if the unpaid balance of the amount to be paid under the Subcontract shall exceed the expense incurred by the Owner and/or MJS in finishing the Work, including reasonable overhead, a 15% markup, and attorneys' fees and disbursements, such excess shall be paid to Subcontractor; if such expense shall exceed such unpaid balance, Subcontractor shall pay the difference to MJS on demand. Whether or not Subcontractor's right to proceed with the Work is terminated, Subcontractor shall be liable for any costs and damages to MJS resulting from such default. In addition to the foregoing, Subcontractor shall be liable to MJS for any liquidated damages that are assessed against and collected from MJS that are directly or indirectly attributable to Subcontractor's default or failure or neglect to carry out the Work in strict accordance with the Subcontract or failure to perform a provision of the Subcontract. All of the

remedies available to MJS under the Subcontract, or at law or in equity, shall be cumulative and the exercise of one remedy shall not preclude the exercise of the same or any other remedy. If the Subcontract is wrongfully terminated by MJS, Subcontractor agrees that such wrongful termination will be deemed to be a termination for convenience under Section 21 hereof, and Subcontractor shall only be entitled to receive those sums which become due Subcontractor upon a termination for convenience under the Subcontract. In no event shall Subcontractor be entitled to recover anticipated profit upon unperformed Work.

21. Termination for Convenience. MJS may, at its option, terminate the Subcontract at any time and without cause. In the event that MJS so elects to terminate the Subcontract, Subcontractor shall be entitled to compensation, subject to the requirements set forth in Section 8 hereof, for all Work actually performed in full settlement of all claims Subcontractor may have against MJS or the Owner, and Subcontractor hereby waives any and all claims for special, indirect, consequential or other damages resulting from such a termination, including, without limitation, lost profits.

22. Dispute Resolution. All disputes, claims or controversies arising in connection with the Subcontract, the Work or the Project shall be resolved through arbitration, unless the Prime Contract does not permit MJS to resolve disputes with the Owner through arbitration, in which case MJS may elect to resolve disputes with the Subcontractor through litigation. In the event of arbitration, the arbitration shall be conducted in accordance with the Construction Industry Rules of the American Arbitration Association then in effect, and judgment upon the award rendered in arbitration may be entered in any court having jurisdiction. MJS may join or consolidate any arbitration between MJS and Subcontractor with any other arbitration proceeding relating to or arising from the Project. In no event shall Subcontractor delay, disrupt or stop the Work as a result of a dispute, claim or controversy relating to the Subcontract, the Work or the Project.

23. Miscellaneous Provisions.

(a) All of the Subcontract Documents shall be considered complimentary. In the event that such an interpretation is not possible, the order of precedence with respect to such provisions shall be as follows: (i) written modifications, including Change Orders, to the Subcontract Documents; (ii) the applicable Work Order and any exhibits thereto, unless another Subcontract Document, including the Prime Contract, imposes a higher standard or greater requirement on Subcontractor, in which case such Subcontract Documents, and (iii) the other Subcontract Documents, unless (ii) applies.

(b) The partial or complete invalidity of any one or more of the provisions of the Subcontract shall not affect the validity or continuing force and effect of any other provisions of the Subcontract. The failure of either party to insist, in any one or more instances, upon the strict performance of any of the terms, conditions or provisions of the Subcontract shall not constitute or be construed as a waiver or relinquishment of term, condition or provision with respect to further or future performance.

(c) Subcontractor shall not sell, let, assign or transfer the Subcontract, or any part of the Work, or any balances or sums of money due and payable hereunder, without the prior written consent of MJS, which consent may be withheld for any reason.

(d) No action shall be maintained against MJS upon any claim arising out of or based upon the Subcontract, the Work or the Project, unless commenced within 1 year after the last Work was performed or material was furnished under the Subcontract.

(e) All notices required to be given hereunder shall be in writing and delivered by overnight delivery, hand delivery, fax, or by certified mail, return receipt requested, addressed to the recipient at its address appearing on the first page of the applicable Work Order. All notices shall be effective upon receipt.

(f) The Subcontract shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

(g) Subcontractor shall be an independent contractor in the performance of the Work, and neither Subcontractor nor anyone employed by Subcontractor shall be deemed the agent, representative, employee, servant or partner of MJS. Nothing in the Subcontract shall be construed to grant or create any third party beneficiary rights at law or in equity.

(h) The Subcontract supersedes absolutely all prior agreements among the parties relative to the subject matter hereof and contains the entire understanding among the parties relative thereto.

(i) The Subcontract shall not be amended except by written agreement of MJS and Subcontractor.

(j) The Subcontract shall be governed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflict of laws provisions thereof.

Contractor:

Subcontractor:

MJ Settelen Construction, LLC

By: _____

By: _____

Name/Title: _____

Name/Title: _____

Date: _____

Date: _____

EXHIBIT A
INSURANCE REQUIREMENTS

Prior to commencement of any work under a Work Order and until completion and final payment is made for Subcontractor's Work (or for such longer period as be required by this Exhibit A or the Subcontract Documents), Subcontractor and each and every sub-subcontractor of Subcontractor shall, at its sole expense, maintain the following insurance on its own behalf and furnish to MJS Certificates of Insurance evidencing same. The term "Subcontractor" as used in these Insurance Requirements shall mean and include Subcontractor and sub-subcontractors of every tier.

A. Worker's Compensation and Employers Liability Insurance: in the state in which Subcontractor's Work is to be performed and elsewhere as may be required and shall include, where applicable, U.S. longshoremen's and harbor workers' coverage.

1. Workers' compensation coverage: statutory requirements.
2. Employer's liability insurance with limits not less than:
 - Bodily injury by accident: \$1,000,000 each accident
 - Bodily injury by disease: \$1,000,000 each employee
 - Bodily injury by disease: \$1,000,000 policy limit
3. Including Waiver of Right to Recover from Others Endorsement (WC 00 0313) where permitted by state law, naming MJS and Owner.

B. Commercial General Liability Insurance: (covering all operations by or on behalf of Subcontractor to include coverage for premises, operations and mobile equipment; independent contractors; products liability/completed operations; contractual liability (including liability for employee injury as assumed under a contract); broad form property damage; explosion, collapse and underground hazards; personal injury liability):

1. Occurrence form with the following limits of liability:
 - General aggregate: \$2,000,000
 - Products liability/completed operations aggregate: \$2,000,000
 - Each occurrence: \$1,000,000
 - Personal and advertising injury: \$1,000,000
 - Fire damage (any one fire): \$50,000
 - Medical expense (any one person): \$5,000
2. Products liability/completed operations coverage must be maintained for a period of at least two (2) years after final payment.
3. The general aggregate limit must apply on a per project basis.
4. Contractual liability (including liability for employee injury assumed under a contract) provided by the Standard ISO Policy Form CG 00 01. Policy may NOT include the restrictive endorsement CG 24 26 (Amendment of Insured Contract Definition) or any

other provision excluding coverage for contractor's sole negligence which has been assumed by contract.

5. Coverage for mold/fungus (no mold/fungus exclusion), or in the alternative, and upon review and approval by MJS, coverage for mold/fungus can be provided by Subcontractor's Pollution Liability Policy.
6. No exterior insulated finishing system ("EIFS") or similar exterior wall system exclusion (if applicable under the scope of services of this Subcontract).
7. No residential exclusion and the certificate of insurance must affirmatively state that no such exclusion is attached to the policy.

C. Automobile Liability Insurance:

1. Coverage to include:
 - All owned, leased, hired, and non-owned vehicles (any auto).
 - Contractual liability coverage (including liability for employee injury assumed under a contract).
2. Per accident combined single limit: \$1,000,000

D. Commercial Umbrella Liability:

1. Occurrence limit: \$2,000,000
2. Aggregate limit (where applicable): \$2,000,000
3. Policy to apply excess of the commercial general liability (following form, per project aggregate limit), commercial automobile liability and employer's liability coverage.
4. Policy must not require contribution before it will apply; Policy must be primary and must be exhausted prior to any other policy of MJS or Owner responding.

E. Property Insurance: Subcontractor is solely responsible for any damage to its work, materials, equipment, tools, etc. Subcontractor shall maintain an installation floater property policy written on an all risk basis with limits not less than the Subcontract Price. It is the responsibility of Subcontractor to determine if any property or builder's risk coverage provided by others is adequate to protect Subcontractor. In the event that Subcontractor determines that said coverage is inadequate, Subcontractor may obtain such insurance at Subcontractor's sole expense. Nothing in these Master Subcontract Terms and Conditions shall require MJS to obtain or participate in any builder's risk or property insurance program for Subcontractor's benefit.

F. Professional Liability Coverage: If any part of Subcontractor's work is performed on a design-build basis,

1. Subcontractor shall maintain insurance covering losses caused by professional services performed in connection with Subcontractor's Work having the following limits:
 - Per claim limit: \$1,000,000
 - Aggregate limit: \$1,000,000
2. If coverage is written on a claims-made basis, any retroactive date applicable to coverage under the policy shall precede the effective date of this Subcontract, and continuous coverage shall be maintained or an extended discovery period will be purchased for a period of two (2) years beginning when Subcontractor receives final payment.

G. Pollution Legal Liability Coverage:

1. Subcontractor shall maintain insurance covering losses caused by pollution conditions that arise from Subcontractor's Work having the following limits:
 - Per claim/aggregate limit: \$1,000,000/\$1,000,000
2. If coverage is written on a claims-made basis, any retroactive date applicable to coverage under the policy shall precede the effective date of this Subcontract, and continuous coverage shall be maintained or an extended discovery period will be purchased for a period of two (2) years beginning when Subcontractor receives final payment.

H. Deductibles or Self-Insured Retentions: None of the policies of insurance required by this Subcontract shall contain deductibles or self-insured retentions in excess of \$10,000, unless agreed to in writing by MJS.

I. Financial Rating and Admitted Status of Insurance Companies: The policies of insurance required by this Subcontract shall be issued by insurance companies that: (1) have an A.M. Best Rating of A- (Excellent) or higher; (2) have an A.M. Best Financial Size Category of Class VII or higher; and (3) are authorized to do business on an admitted basis in the jurisdiction in which Subcontractor's Work is performed.

J. Additional Insured Coverage: MJS, Owner and any other party whom MJS is required to provide additional insured coverage under the Prime Contract (including their agents, employees, representatives, officers, directors, stockholders, members and managers) shall be added as additional insureds on all liability policies required by this Subcontract, even for claims regarding their sole negligence. The coverage provided to the additional insureds on Subcontractor's liability policies shall be primary coverage to any other coverage maintained by the additional insureds and shall not permit or require such other coverage to contribute to the payment of any loss. In addition, the additional insureds shall also be provided the same completed operations coverage detailed under the commercial general liability coverage requirements set forth in this Subcontract. Subcontractor agrees, for the purpose of additional insured coverage only, that Subcontractor's Work is being performed for all additional insureds identified above and that this Subcontract is an agreement between Subcontractor and all additional insureds to provide additional insured coverage.

K. Advance Written Notice of Any Change in Insurance: Insurance policies required by this Subcontract shall not be canceled, materially changed or non-renewed without at least thirty (30) days advance

written notice by Subcontractor to MJS at the address set forth in this Subcontract by certified mail, return receipt requested.

L. Waiver of Rights of Recovery and Waiver of Rights of Subrogation: Subcontractor and its sub-subcontractors waive all rights of recovery and shall cause their respective insurers to waive their rights of subrogation against MJS, Owner, the Architect, all additional insureds, and their respective agents and employees, for loss or damage caused by fire or other perils. Subcontractor shall require of its subcontractors, vendors, suppliers, agents and employees by appropriate agreements, written where legally required for validity, similar waivers from each in favor of all other parties enumerated in this Subsection.

M. General Requirements:

1. The amount of insurance provided by the insurance policies required by these Master Subcontract Terms and Conditions shall not be construed to be a limitation of the liability on the part of Subcontractor. The carrying of insurance required by these Master Subcontract Terms and Conditions shall in no way be interpreted as relieving Subcontractor of any responsibility or liability under the Subcontract or otherwise.
2. Any type of insurance or any increase in limits of liability not described above which Subcontractor requires for its own protection or on account of statute shall be its own responsibility and at its own expense.
3. Prior to commencement of Subcontractor's Work and as a condition precedent to payment to Subcontractor, Subcontractor shall file certificates of insurance with MJS, which shall be subject to MJS's approval. The Project must be identified on all Certificates and MJS must be identified as the certificate holder. Subcontractor's obligation to provide the insurance set forth herein shall not be waived by any failure to require a certificate of insurance, MJS's acceptance of a certificate of insurance showing coverage varying from these requirements, or by MJS's direction to commence Subcontractor's Work.
4. In the event of a failure of Subcontractor to furnish and maintain insurance and to furnish satisfactory evidence thereof, MJS shall have the right (but not the obligation) to procure and maintain the insurance as will protect MJS, and Subcontractor pay the cost thereof to MJS immediately upon presentation of an invoice.