



## **ADDENDUM # 01**

**February 16, 2024**

**NC State University Doak Field Enhancements  
1081 Varsity Drive, Raleigh, NC 27606**

### ***PHASE 1 – PRE-ENGINEERED METAL BUILDING***

To All Bidding Contractors:

By record, the following information and attached items are deemed bid documents. The purpose of this addendum is to provide information and clarity for the bidding process. Bidders shall acknowledge receipt of Addendum #01 within the Bid Form. Lack of acknowledgement may be deemed reason for rejection of your bid.

#### **Information:**

- Second Site Meeting: Tuesday, February 20, 2024 @ 10:00am
  - Contact Jeff King (703-789-3401 cell, [jking@romeoguest.com](mailto:jking@romeoguest.com))
- Bid Date: March 7, 2024 @ 3:00pm
- Bid Location: NCSU Admin Services III, Conference Room 220
  - 2701 Sullivan Drive, Raleigh, NC 27607

#### **Attachments:**

- Meeting Minutes from the Pre-Bid Meeting dated 2/14/24
- Sign-in sheet from the Pre-bid Meeting dated 2/14/24
- Copy of the presentation used for Pre-bid Meeting dated 2/14/24
- Bid Package #01-13A Pre-Engineered Metal Building
- Bid Form for Bid Package #01-13A Pre-Engineered Metal Building
- Plan and Specification List
- Preliminary Phase 1 Project Schedule
- Preliminary Logistics plan\_
- Sample Subcontract (MSA)

**End of Addendum #01**

## PRE-BID MEETING MINUTES

### NC State University Doak Field Enhancements

#### PHASE 1 – PRE-ENGINEERED METAL BUILDING

**Meeting Date/Time:** Wednesday, February 14, 2024 @ 3:00pm  
**Meeting Location:** NCSU Admin Services III Bldg. – Conference Room 220

**Attendees:** Attendee list attached hereto.  
Additional attendees included Scott Wolynech (RGA), Joshua Spells (RBI), Ryan Dickinson (RBI), Mark Michaelson (NCSU)

**Note:** A copy of the Pre-Bid Presentation is hereto attached for your review and use.

#### AGENDA ITEMS

##### 1. Team Member Introductions

- a. Introduced team members present at this meeting.
- b. Added Ryan Dickinson
- c. Noted prequalified bidders associated with the PEMB package
- d. Non-mandatory pre-bid
  - i. A second site visit will be scheduled for all bidders.

##### 2. Project Overview

- a. Focus on PEMB furnish and install only (not complete Phase 1)
- b. Discussed consideration of items often excluded in plan documents that impact PEMB design.
  - i. Supplemental loads
  - ii. Coordination of installations not in the PEMB scope
    1. Concrete slab
    2. Anchor bolts
    3. Netting
    4. Overhead doors
    5. Etc.

##### 3. Bid Process – Timeline

- a. Review of current bid timeline
  - i. Bid Date: March 7, 2024 at 3pm
  - ii. Anticipated start date of construction: May 9, 2024
  - iii. Anticipated start of PEMB erection: August 5, 2024

##### 4. Schedule Overview

- a. PEMB generates the critical path
  - i. Knowledge of key dates is paramount to project planning and delivery.
  - ii. Anticipated timeframes for shop drawing development, fabrication and erection will be requested on the bid form.

##### 5. Project Requirements & Info

- a. Plan and spec documents have been distributed and will be documented by listing to ensure all documents are included/received by all bidders.
  - b. Bid package information for the PEMB trade is under review by NCSU and the Architect. Bid package information will be distributed with Addendum #1.
  - c. The bid form will be part of the overall bid package. The bid form will be part of Addendum #1.
  - d. A sample subcontract (Master Service Agreement, MSA) will be included with the bid package documents. This sample document should be reviewed and questions addressed prior to bidding.
6. Logistics planning is preliminary given all neighbors (Housing) comments have not been received/reviewed. Site access was clearly identified along with the proposed location of the building. Lay-down areas are currently assumed. Parking areas are noted on the logistics plan, however any cost born from parking is the responsibility of the subcontractors (not the CMAR).

#### **7. Project Diversity Goals**

- a. Joshua defined the State goal requirement of 10% while focusing on our target goal of 25% for this project.
- b. This trade package was recognized as a difficult package to achieve high participation values.
- c. MWBE forms will be included with the bid form.
- d. A good-faith effort, supported by documentation, is expected.

#### **8. Risk Management**

- a. Safety of students, players, faculty, staff, visitors, fans, etc. takes precedence over productivity.
- b. Anticipated insurance requirements were reviewed.
- c. Professional and Pollution liability requirements will be clarified in the sample subcontract document (MSA).

#### **9. Q&A**

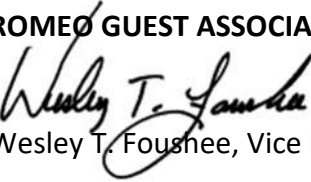
- a. Overhead Doors - Overhead doors will be provided and installed by others. However, this trade package will be required to account for loads to the structure and to ensure (review & acknowledge) shop drawings for coordination.
- b. Anchor Bolts - Anchor bolts are to be provided by the PEMB contractor. Anchor bolt details shall be provided by the structural engineer, coordinated with reaction and building information provided by the PEMB contractor.
- c. Personnel Doors & Hardware - Personnel doors and hardware are to be provided by the PEMB contractor. Door hardware has not been specified to date. Further direction will be provided by addendum. If no information is provided by the owner/designer, an allowance will be established for all bidders to include in their bids.
- d. Building Layout Request - A rough layout of the building (4 corners) was requested as part of the second site visit. Jeff King will work to have this staked for review. The stake location is to be reviewed as rough-staking, not surveyed for construction.
- e. Construction Noise - Construction noise is relative and will have an impact on games, as well as adjacent housing. Further discussion and determination of work hour coordination will be required.
- f. Pollution Liability Requirements - Pollution liability requirements will be clarified in the subcontract (MSA) sample general provisions.

**10. Site Walk**

- a. All attendees participated in a site walk to review site conditions, access, and coordination.

*These minutes represent our recollection of items discussed. Should any of the above be in error or require correction and/or additional input, please notify the writer.*

**ROMEO GUEST ASSOCIATES, LLC**



Wesley T. Foushee, Vice President



**NC STATE UNIVERSITY**

**DOAK FIELD ENHANCEMENTS – PHASE 1**

**February 14, 2024**

***PRE-BID MEETING (PEMB)***



# MEETING AGENDA

- I. Team Member Introduction
- II. Project Overview
- III. Bid Process - Timeline
- IV. Schedule Overview
- V. Project Requirements & Info
- VI. Project Diversity Goals
- VII. Risk Management
- VIII. Q & A
- IX. Site Walk / Discussion

**ROMEOGUEST**  
A NEW SOUTH COMPANY



# TEAM MEMBER INTRODUCTIONS



**WES FOUSHEE**  
*Project Coordinator*



**JOSHUA SPELLS**  
*Diversity Coordinator*



**SCOTT WOLYNEC**  
*Preconstruction Manager*



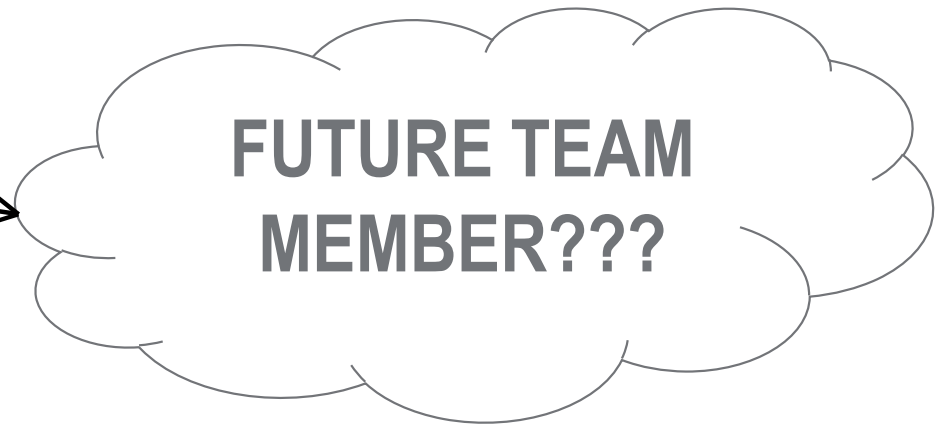
**JEFF KING**  
*Sr. Project Manager*





## **PREQUALIFIED CONTRACTORS**

- **CIC Construction Group USA, LLC**
- **Metal Building Specialists, LLC**
- **Baker Roofing Company, LLC**

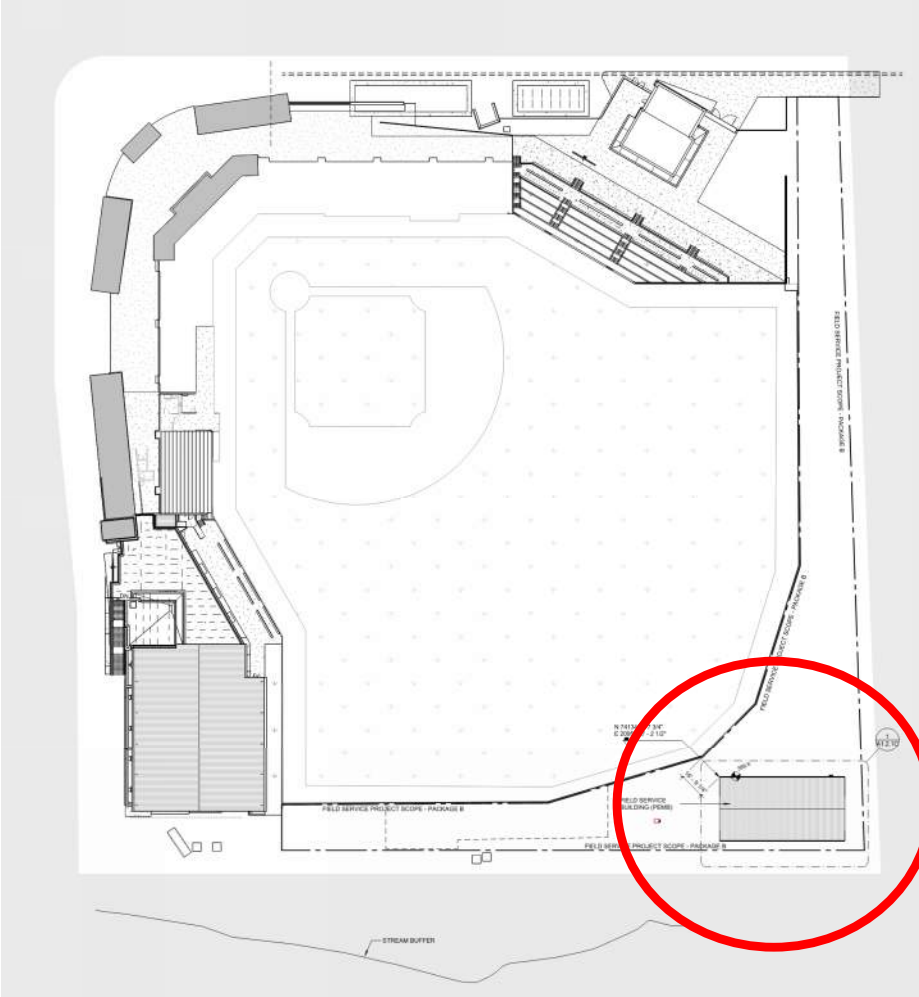


- **Pre-Bid Recommended, Not Mandatory**
- **A 2<sup>nd</sup> site visit will be scheduled and each Contractor will be invited**

# PROJECT OVERVIEW

# PHASE 1

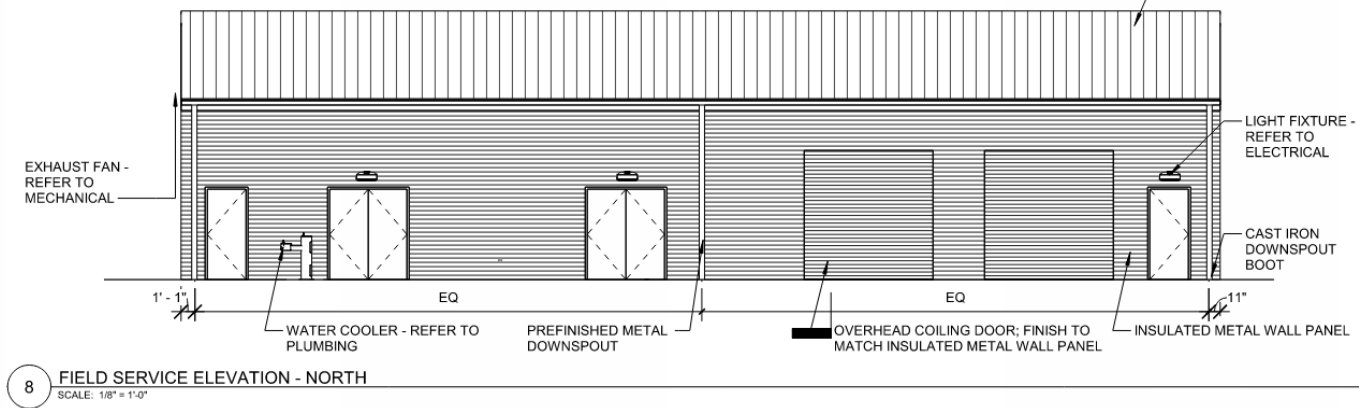
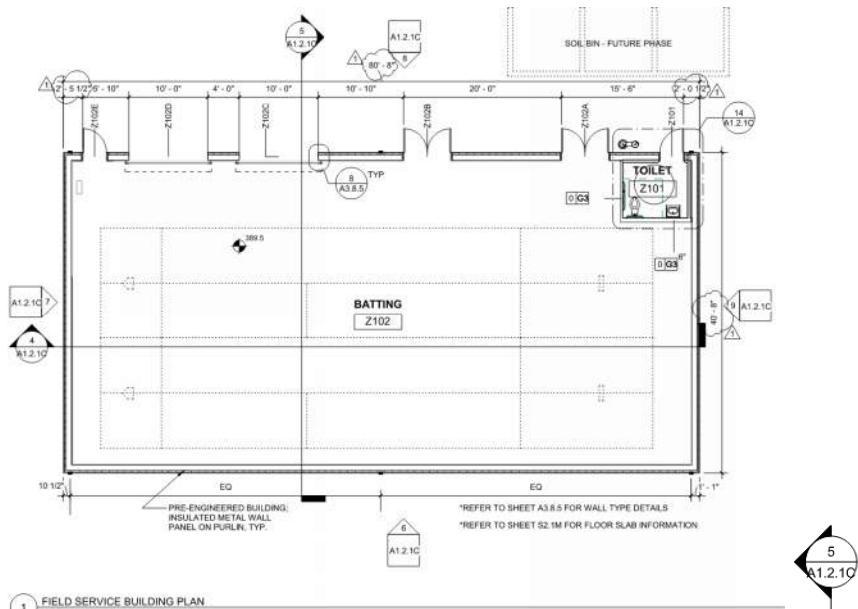
**Pre-Engineered Metal Building  
(PEMB) Only**



# PROJECT OVERVIEW

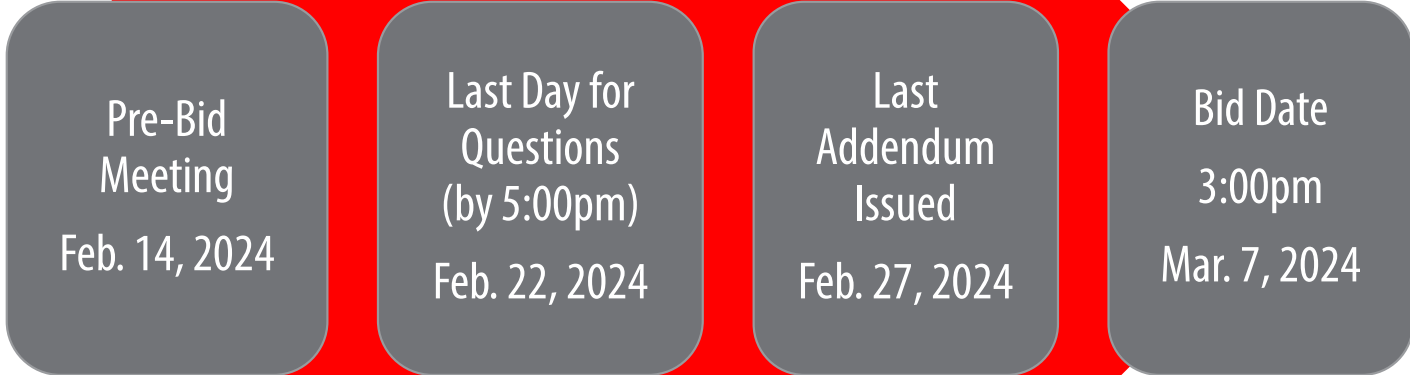
# PHASE 1

- PEMB Furnish and Install
- Includes Personnel Doors (Not Overhead Doors)
- Design Provisions
  - Anchor Bolt Coordination / Layout Verification
  - Slab Design / Reinforcing Layout Confirmation
  - Mechanical & Lighting Loads
  - Netting Loads
  - Overhead Door Coordination
  - Optional Door Hardware
  - Insulation Options / Alternates



# BID PROCESS - TIMELINE

## BID PROCESS

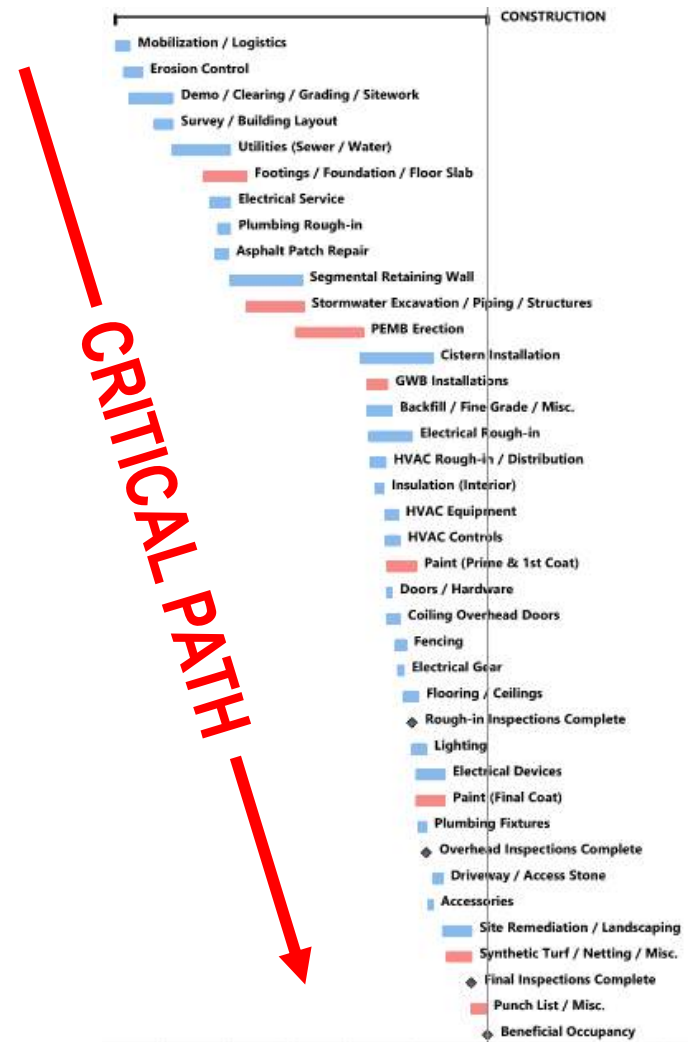


**BIDDING:**  
Process  
2/14/24 – 3/7/24  
  
Bid Date  
March 7, 2024 @ 3pm

**CONSTRUCTION:**  
Anticipated Start  
May 9, 2024  
  
Anticipated Bldg. Erection  
August 5, 2024

# SCHEDULE OVERVIEW

- Bidding
- Bid Confirmation (Award)
- Shop Drawing Development (Timeframe?)
- Approvals / Revisions
- Final Shop Drawings (Timeframe?)
- Fabrication (Timeframe?)
- Anchor Bolt Design / Layout Drawings
- Furnish Anchor Bolts
- Confirm Anchor Bolt Layout
- PEMB Delivery Date
- Erection (Timeframe?)



# PROJECT REQUIREMENTS & INFORMATION

- Plan & Spec Documents
- Bid Package Information
  - Under review
  - Distribution by end of week
- Bid Form
  - Distribution by end of the week
- Sample Contract
  - Master Service Agreement
  - Distribution by end of week
- Logistics Planning
  - In process
  - Coordination w/ Housing

RGA-RBI, A Joint Venture  
NC State Doak Field Enhancement  
Phase 1

Bid Package 1-13A  
Issue Date: February 14, 2024  
Revision: 0

**Bid Package Number: 1-13A** **Bid Package: Pre-Engineered Metal Building**

The following information is provided to define and describe the scope of work required of the Subcontractor and is intended to be complementary with the requirements of all other Contract Documents. While specific listed CSI divisions are referenced for this bid package, subcontractor is responsible to review and abide by all project documents. This Scope of Work is intended as a summary and does not describe the complete and total scope of work.

<u>Specification Sections</u>	<u>Description</u>
Division 00	Procurement and Contracting Requirements
Division 01	General Requirements
07 21 00	Thermal Insulation
13 12 00	Metal Building Systems

**All related sections and requirements as listed within each division or section.**

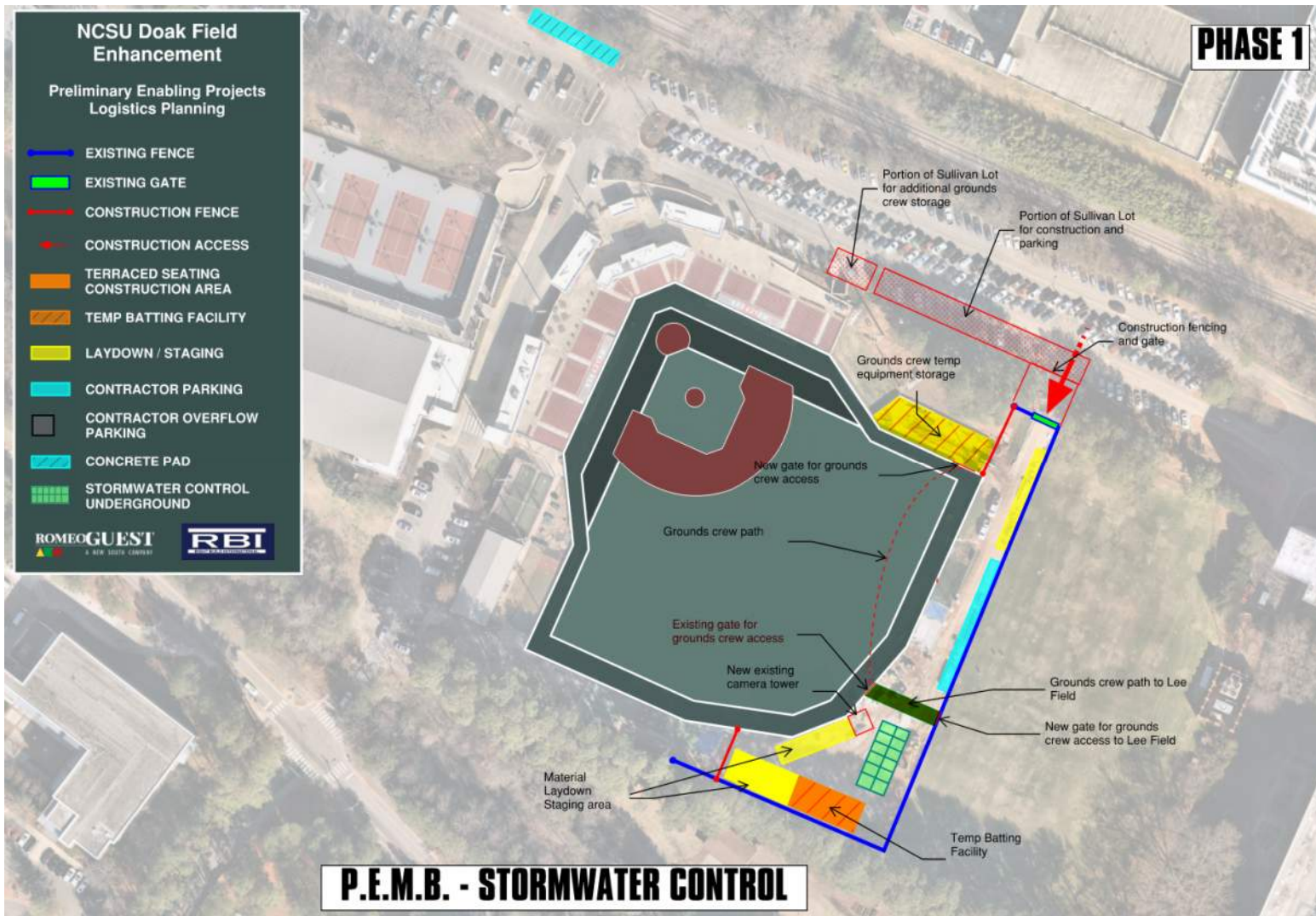
It is the intent of this Subcontract Agreement to provide for the complete engineering, coordination, furnishing, and installation of the Pre-Engineered Metal Building Work as required, shown, and described and specified under this Subcontract, and all related scope and services, required in order to complete the Project. This Subcontractor shall be responsible to perform all Work not expressly specified or indicated by the Contract Documents but as required for a thorough and complete execution of the Work of this Subcontract in every respect. Note that the word "provide" if, and when used herein shall mean furnish and install completely, including all costs for labor, materials, and equipment. It is further understood that the Project Drawings, Specifications and other Documents listed in Exhibit B, may not be fully developed, and that the Total Subcontract Agreement Price will include a complete and functional installation to the satisfaction of the Owner and the Construction Manager.

In addition to the foregoing, it is further understood and agreed that this Subcontractor also includes the furnishing and installation of the below listed items regardless of whether or not they are in the above Specification sections, or any other Specification section, or shown on the plans. Drawing and detail references are provided for reference only and are not to be considered as all-inclusive of the Contract Documents for the particular items referenced.

**Project Specific:**

1. Subcontractor shall confirm that they have read, agree with and are willing to sign the Master Services Agreement included for this project.
2. Subcontractor will be enrolled in Subcontractor Default Insurance program furnished by CM. Subcontractor pricing shall include general liability, umbrella, workers comp and auto insurance at project minimum levels.
  - a. General Liability Insurance - \$1,000,000.00
  - b. Workman's Compensation Insurance - \$1,000,000.00
  - c. Auto - \$1,000,000.00 combined limit
    - i. Liability - \$100,000.00
    - ii. Bodily Injury - \$500,000.00
    - iii. Property Damage - \$100,000.00
  - d. Umbrella Liability - \$2,000,000.00
  - e. Professional Liability (as applicable) - \$1,000,000.00
  - f. Pollution Liability (as applicable) - \$1,000,000.00

# LOGISTICS PLANNING - PRELIMINARY



# PROJECT DIVERSITY GOALS

- **25% MWBE – HUB CERTIFIED PARTICIPATION**
- **TIER 1 & TIER 2 STRATEGY**
- **BID PACKAGE DEVELOPMENT**
  - Will include MWBE requirements
  - Good Faith
- **TECHNICAL ASSISTANCE**

Long Term  
MWBE  
Partners



**SHUA SPELLS** / Diversity Coordinator





## RISK MANAGEMENT

**SAFETY**

**#1**

## INSURANCE REQUIREMENTS

- General Liability Insurance – \$1M
- Automobile Liability – \$1M (comb. single limit)
- Workers Compensation – \$1M
- Umbrella / Excess Liability – \$2M
- Professional Liability – \$1M
  - Only for design components within trade
- Pollution Liability – \$1M
  - As required by the SCO for certain scopes



# QUESTIONS



# CONTACT INFORMATION



<u>DESCRIPTION</u>	<u>CONTACT</u>	<u>EMAIL</u>
Project Coordinator	Wes Foushee	wfoushee@romeoguest.com
Sr. Project Manager	Jeff King	jking@romeoguest.com
Preconstruction Manager	Scott Wolyneec	swolyneec@romeoguest.com
Diversity Coordinator	Joshua Spells	jspells@rightbuildint.com
NC State HUB Program Manager	Carla Daniels	cjdaniel@ncsu.edu



**NC State University Doak Field Enhancement**  
SCO Project No. 22-24384-01B

**Advertisement to Bid for Prequalified Subcontractors**

**February 8, 2024**

Romeo Guest – Right Build, a Joint Venture (RGA-RBI) is accepting bids for the NC State University Doak Field Enhancement project from the list of approved subcontractors contained within. Key dates and information for the bid are as follows:

**Pre-Bid Meeting:**

A pre-bid meeting will be held on February 14, 2024 at 3:00PM in Conference Room 220 in the Administrative Services III building on the NC State University campus located at 2701 Sullivan Drive, Raleigh, NC 27607.

**RFI's:**

RFI's will be accepted in writing until February 22, 2024 at 4:00PM. All RFI's should be sent to both;

Scott Wolynech                      swolynech@romeoguest.com  
Jeff King                              jking@romeoguest.com

A final addendum responding to the RFI's will be issued on February 27, 2024 by 3:00PM.

**Bid Opening/Submission:**

Sealed Bids will be received from prequalified subcontractors on March 7, 2024 at 3:00PM in Conference Room 220 in the Administrative Services III building on the NC State University campus located at 2701 Sullivan Drive, Raleigh, NC 27607. All proposals shall be lump sum and without qualifications.

Bids that are not hand delivered to Conference Room 220 may be delivered to Romeo Guest Associates' offices located at 1715 Camden Avenue, Durham, NC 27704, in sealed envelopes no later than 1:00PM on March 7, 2024.

The following documents must be submitted with your bid.

1. Bid Form
2. MBE Forms

If all documents are not submitted, subcontractor's proposal will be deemed non-responsive.

**Bonding Requirements:**

Bid bonds will not be required for this project. Payment and performance bonds will not be required for this project. Successful bidders will be enrolled in the Subcontractor Default Insurance (SDI) program issued by the CMAR. The cost of the SDI will be borne by the CMAR.

**HUB Participation:**

RGA-RBI is seeking participation from certified state of North Carolina HUB companies for this project. Participation is encouraged from both tier 1 and tier 2 subcontractors. The stated HUB participation goal for this project is 20%.

**Contract Documents:**

Complete plans, specifications and supporting documents can be obtained electronically at Romeo Guest Associates' online plan room through PipelineSuite. All prequalified bidders will be granted access to the documents.

Physical copies of the plan documents will be available for review at Romeo Guest Associates' offices located at 1715 Camden Avenue, Durham, NC 27704.

**Bid Packages and Bidders:**

Proposals from prequalified contractors will be received for the following bid packages;

- 1-13A Pre-engineered Metal Buildings

The following contractors have been pre-qualified for this project;

<b>Bid Package 1-13A Pre-engineered Metal Buildings</b>			
<b>Company</b>	<b>Contact</b>	<b>Phone</b>	<b>Email</b>
Baker Roofing	David Snow	919-828-2975	dsnow@bakerroofing.com
CIC Construction LLC	Tony Jordan	919-297-2957	tjordan@cic-pr.com
Metal Building Specialists	Jerry Mott	252-314-0819	jmott@mbs-nc.com

**Bid Package Number: 1-13A**

**Bid Package: Pre-Engineered Metal Building**

The following information is provided to define and describe the scope of work required of the Subcontractor and is intended to be complementary with the requirements of all other Contract Documents. While specific listed CSI divisions are referenced for this bid package, subcontractor is responsible to review and abide by **all** project documents. This Scope of Work is intended as a summary and does not describe the complete and total scope of work.

**Specification Sections**

**Description**

Division 00	Procurement and Contracting Requirements
Division 01	General Requirements
07 21 00	Thermal Insulation
13 12 00	Metal Building Systems

**All related sections and requirements as listed within each division or section.**

It is the intent of this Subcontract Agreement to provide for the complete engineering, coordination, furnishing, and installation of the Pre-Engineered Metal Building Work as required, shown, and described and specified under this Subcontract, and all related scope and services, required in order to complete the Project. This Subcontractor shall be responsible to perform all Work not expressly specified or indicated by the Contract Documents but as required for a thorough and complete execution of the Work of this Subcontract in every respect. Note that the word "provide" if, and when used herein shall mean furnish and install completely, including all costs for labor, materials, and equipment. It is further understood that the Project Drawings, Specifications and other Documents, may not be fully developed, and that the Total Subcontract Agreement Price will include a complete and functional installation to the satisfaction of the Owner and the Construction Manager.

In addition to the foregoing, it is further understood and agreed that this Subcontractor also includes the furnishing and installation of the below listed items regardless of whether or not they are in the above Specification sections, or any other Specification section, or shown on the plans. Drawing and detail references are provided for reference only and are not to be considered as all-inclusive of the Contract Documents for the particular items referenced.

**Project Specific:**

1. Subcontractor shall confirm that they have read, agree with and are willing to sign the Master Services Agreement included for this project.
2. Subcontractor will be enrolled in Subcontractor Default Insurance program furnished by CM. Subcontractor pricing shall include general liability, umbrella, workers comp and auto insurance at project minimum levels.
  - a. General Liability Insurance - \$1,000,000.00
  - b. Workman's Compensation Insurance - \$1,000,000.00
  - c. Auto - \$1,000,000.00 combined limit
    - i. Liability - \$100,000.00
    - ii. Bodily Injury - \$500,000.00
    - iii. Property Damage - \$100,000.00
  - d. Umbrella Liability - \$2,000,000.00
  - e. Professional Liability (as applicable) - \$1,000,000.00
  - f. Pollution Liability (as applicable) - \$1,000,000.00

3. Payment and performance bonds shall not be included within subcontractor pricing as they will not be required.
4. Proper supervision for the scope of this work is to include a full time, dedicated site supervisor. Supervisor shall be able to communicate effectively in English. In addition, an identified QA/QC Representative is required but not limited to perform pre and post inspections in advance of all fabrication, hoisting, lifting, bolting, etc. Finally, a Project Manager is required for the project and to attend weekly subcontractor meetings.
5. Subcontractor shall provide all insurance, taxes, permits, lane closures, traffic control and fees required to complete this scope of work.
6. Subcontractor is responsible for daily cleanup of their work to CM provided dumpster. Workers shall have necessary small tools and supplies (brooms, shovels, hoses, wheelbarrows, trash carts, etc.) to perform these duties included in this agreement.
7. Minimal staging will be allowed on project site. Subcontractor is to assume multiple deliveries will be required for just-in-time installation. Deliveries must be coordinated with CM 48 hours in advance. Unauthorized deliveries may be turned away.
  - a. Subcontractor will gain approval from RGA-RBI, for all material staging locations prior to material deliveries and unloading. Any costs associated with off hour deliveries shall be included in this scope of work. All stored materials shall be placed on dunnage.
8. In accordance with the state of North Carolina project goals, subcontractor shall strive to achieve 25% minority business participation within their scope of work.
9. Subcontractor is responsible for all costs associated with accessing the project site, to include - but not limited to: costs of insurance, any required badges, and parking.
10. Subcontractor shall provide project specific plans including but not limited to the following:
  - a. Construction Work Plan (CWP) for each sequence of work
  - b. Installation Plan
  - c. QA/QC Plan
11. Subcontractor Superintendent is required to have an iPad/tablet/electronic device to assist with the safety and daily reports.
12. Subcontractor shall provide all submittals including, but not limited to: shop drawings, mockups, erection plan(s), calculations, product data, color samples, SDS cut sheets, wiring diagrams, connection design, etc. Where required, shop drawings are to be designed and stamped by a Registered Professional Engineer, licensed in the State of North Carolina.
13. Subcontractor shall attend all pre-installation conferences as pertains to this trade and for other trades, as required, in addition to daily morning huddle/Task Hazard Analysis (THA).
14. Subcontractor to sequence work and coordinate with others as required to transition between the Subcontractor's scope of work and other subcontractor's scopes of work.
15. Subcontractor shall provide all closeout materials, as-built drawings, documentation, and training (as required) by Substantial Completion of project.
16. Provide material and workmanship warranty from Substantial Completion per Contract Documents, in addition to extended and special warranties as required by the Contract Documents.
17. Subcontractor is responsible for maintaining the fire rating of any system penetrated for its scope of work, to include but not limited to: floor, wall, and ceiling penetrations.
18. Subcontractor has included all necessary safety measures in compliance with RGA-RBI

Safety Program, current regulatory standards, and/or including OSHA. Workers shall have all necessary protective accessories including at a minimum, but not limited to, all head, hearing, high - visibility vest and/or shirts, gloves/hand protection and eye protection. All required safety measures, including any special requirements as a result of specific conditions, shall be the responsibility of the Subcontractor. If during work, areas of concern are noticed then it shall be the responsibility of the Subcontractor to immediately notify Construction Manager for review and resolution.

19. Provisions for welding including Hot Work Permit, exhaust, ventilation, vision shielding, fire blanketing, vehicular / pedestrian protection shall be included. In areas where torches or other open flame equipment is to be used, Subcontractor shall take all necessary precautions to prevent a fire from occurring. This shall include, but not be limited to: providing fire extinguishers, water hoses, "fire watch", or any other necessary means of prevention required by local code officials.
20. All material to be provided as specified without substitution.
21. Subcontractor responsible to furnish all labor, supervision, scaffolding, lifts, transportation, hoisting, and tools necessary to complete this scope of work. All equipment shall be approved by RGA-RBI and be certified by applicable governing bodies. Operators of equipment shall be certified to operate specified equipment.
22. All pricing shall be guaranteed for the duration of the project.

**Trade Specific:**

1. Subcontractor shall provide all labor, manpower, tools, equipment, hoisting, transportation, and cranes to provide, fabricate, offload, furnish, and install all the work of this subcontract including but not limited to the thermal insulation (above grade), pre-engineered metal building (PEMB), gutters and downspouts, and HM doors/frames/hardware within exterior walls.
2. Equipment to receive, unload and erect the PEMB.
  - a. Equipment shall be inspected and certified by applicable governing bodies.
  - b. Operators shall be certified to operate specified equipment.
3. Delegated design, engineering and shop/installation drawings for the pre-engineered metal building.
4. Furnish anchor bolts.
  - a. Anchor bolts to be set by others.
5. Anchor bolt coordination / layout verification.
6. Slab design / reinforcement layout confirmation.
7. Coordinate openings sizes and locations with specified MEP systems.
8. Mechanical and electrical equipment loads.
9. Batting cage netting loads.
10. Overhead door coordination (doors furnished and installed by others).

**Alternates:**

1. Insulated Metal Panel cladding at walls.
2. Insulated Metal Panel cladding at roof.

**Allowances:**

1. Not Applicable



**Additional Information:**

1. Lead time for completed anchor bolt drawings.
2. Lead time for completed shop drawings.
3. Lead time for re-submittals of shop drawings if required.
4. Lead time for PEMB fabrication/delivery from approved shop drawings.

# **BID FORM**

---

## FORM OF PROPOSAL

**Project:** NC State University Doak Field Enhancement  
1081 Varsity Drive  
Raleigh, NC 27606

**Bids Submitted To:** Romeo Guest – Right Build, A Joint Venture  
Construction Manager

**Bid Package:** **1-13A Pre-engineered Metal Building**

**Bidder:** \_\_\_\_\_

**NC License #:** \_\_\_\_\_

(License # applies to Surveying, Fire Protection, Plumbing, HVAC, Electrical and/or others as required by NC Statute)

**Date:** **Thursday, March 7, 2024**

**Bid Time:** **3:00 PM**

The undersigned, as Bidder, hereby declares that the only person or persons interested in this proposal as principal or principals is or are named herein and that no other person than herein mentioned has any interest in this proposal or in the contract to be entered into; that this proposal is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud. Bidder further declares that he/she has examined the site of the work and the contract documents relative thereto, and has read all special provisions furnished prior to the opening of bids; that Bidder has satisfied themselves relative to the work to be performed,

Bidder proposes and agrees if this proposal is accepted to contract with Romeo Guest – Right Build, A Joint Venture in the form of contract specified in the bid manual, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation and labor necessary to complete the construction of: **1-13A Pre-engineered Metal Building** in complete accordance with the plans, specifications and contract documents, within the overall project time (detailed in the Project Schedule) and to the full and complete satisfaction of Romeo Guest – Right Build, A Joint Venture. Bidder also understands that no money will be allowed for extra work except as set forth in the General Conditions and the Contract Documents.

**Bid Package 1-13A Pre-engineered Metal Building**

---

Base Bid: \_\_\_\_\_ Dollars(\$)

**Confirm Receipt of Addendum**

1 \_\_\_\_\_ 2 \_\_\_\_\_ 3 \_\_\_\_\_ 4 \_\_\_\_\_ 5 \_\_\_\_\_ 6 \_\_\_\_\_ 7 \_\_\_\_\_

**Alternates:**

---

Alternate #1 – Insulated metal panel cladding at walls. \$ \_\_\_\_\_ Add or Deduct

Alternate #2 – Insulated metal panel cladding at roof. \$ \_\_\_\_\_ Add or Deduct

**Unit Prices:**

---

Not applicable

**Allowances:**

---

Not applicable

**All listed allowances shall be included as part of the base bid price.**

**Attachments:**

Enclosed with the bid are the following attachments. The forms are mandatory and must be filled out and returned with the bid proposal. Any bids submitted without these complete forms may be deemed non-responsive.

1. Bid Form
2. MBE Forms

## Minority Business Participation Requirements:

Provide with the bid - Under GS 143-128.2(c) the undersigned bidder shall identify **on its bid** (Identification of Minority Business Participation Form) the minority businesses that it will use on the project with the total dollar value of the bids that will be performed by the minority businesses. **Also** list the good faith efforts (Affidavit **A**) made to solicit minority participation in the bid effort.

**NOTE:** A contractor that performs all of the work with its own workforce may submit an Affidavit (**B**) to that effect in lieu of Affidavit (**A**) required above. The MB Participation Form must still be submitted even if there is zero participation.

After the bid opening - The Construction Manager will consider all bids and alternates and determine the lowest responsible, responsive bidder. Upon notification of being the apparent low bidder, the bidder shall then file within 72 hours of the notification of being the apparent lowest bidder, the following:

An Affidavit (**C**) that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the 10% goal established. This affidavit shall give rise to the presumption that the bidder has made the required good faith effort and Affidavit **D** is not necessary;

**\*OR\***

If less than the 10% goal, Affidavit (**D**) of its good faith effort to meet the goal shall be provided. The document must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations and other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract.

**Note:** Bidders must always submit with their bid the Identification of Minority Business Participation Form listing all MB contractors, vendors and suppliers that will be used. Affidavit **A** or Affidavit **B**, as applicable, also must be submitted with the bid. Failure to file a required affidavit or documentation with the bid or after being notified apparent low bidder is grounds for rejection of the bid.

**Proposal Signature Page**

Bidder further proposes and agrees to commence work under this contract on a date to be specified by the Construction Manager at Risk and shall pursue the scope of work included in its contract in accordance with the schedule prepared by the Construction Manager at Risk.

Respectfully submitted this,

\_\_\_\_\_ Day of \_\_\_\_\_,  
(Write the Date of the Month in Words) (Write the Name of the Current Month & Year)

**WITNESS:** \_\_\_\_\_ **By:** \_\_\_\_\_  
(Printed Name of Person Signing Bid)

\_\_\_\_\_ (Witness Signs here if you are a Proprietorship or Partnership) \_\_\_\_\_ (Signature)

**ADDRESS:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_  
(Owner, Partner, President or Vice-President)

\_\_\_\_\_ **LICENSE #:** \_\_\_\_\_

\_\_\_\_\_ **FEDERAL ID#:** \_\_\_\_\_

**ATTEST:**

**By:** \_\_\_\_\_

(CORPORATE SEAL)

**TITLE:** \_\_\_\_\_  
(Corporate Secretary or Asst. Secretary Only)

Bid Manual received and used in computing bid (initial here) \_\_\_\_\_

**END OF  
BID FORM**

## NC STATE UNIVERSITY DOAK FIELD ENHANCEMENTS

1081 Varsity Drive, Raleigh, NC 27606

### PLAN AND SPECIFICATION DOCUMENTS - BIDDING

Architect: EwingCole

Sheet #	Sheet Name	Date
CS.B	TITLE SHEET AND SHEET INDEX - FIELD SERVICE	1/29/2024
<b>General</b>		
G0.0C	BUILDING CODE SUMMARY - FIELD SERVICE BUILDING	1/29/2024
<b>Life Safety</b>		
LS1.1C	LIFE SAFETY PLAN - FIELD SERVICE BUILDING	1/29/2024
<b>Civil</b>		
C1.00	EXISTING CONDITIONS	1/12/2024
C1.10	DEMOLITION PLAN	1/12/2024
C2.00	SITE PLAN	1/12/2024
C3.00	GRADING PLAN	1/12/2024
C3.10	EROSION CONTROL PLAN	1/12/2024
C4.00	OVERALL UTILITY PLAN	1/12/2024
C8.00	SITE DETAILS	1/12/2024
C8.01	EROSION CONTROL DETAILS	1/12/2024
C8.02	NCGO1 DETAILS	1/12/2024
C8.03	STORMWATER DETAILS	1/12/2024
C8.04	SEWER UTILITY DETAILS	1/12/2024
C8.05	WATER UTILITY DETAILS	1/12/2024
C9.00	STORMWATER CONTROL MEASURE 'A' PLAN VIEW	1/12/2024
C9.01	STORMWATER CONTROL MEASURE 'A' DETAILS	1/12/2024
C9.02	STORMWATER CONTROL MEASURE 'A' DETAILS	1/12/2024
<b>Architectural</b>		
AG0.2.1	ABBREVIATIONS & SYMBOL LIST	1/29/2024
AG0.3.1	SIGNAGE AND ACCESSORY MOUNTING HEIGHTS & CLEARANCES	1/29/2024
A1.01C	ARCHITECTGURAL SITE PLAN - FIELD SERVICE BUILDING	1/29/2024
A1.2.1C	FIELD SERVICE BUILDING	1/29/2024
A3.8.5	FIELD SERVICE BUILDING ENLARGED DETAILS	1/29/2024
<b>Structural</b>		
S2.1M	FIELD SERVICE BUILDING - SLAB ON GRADE & FOUNDATIONS	Rev. 1/12/24
<b>Mechanical</b>		
HG.1	HVAC GENERAL NOTES	1/12/2024
H2.3.1	FIELD SERVICE BUILDING HVAC	1/12/2024
H4.1.1	EQUIPMENT SCHEDULE	1/12/2024
<b>Plumbing</b>		
PG.1	PLUMBING GENERAL NOTES	Rev. 1/12/24
PD2.1.C	FLOOR PLAN LEVEL 1 CENTER FIELD DRAINAGE	Rev. 1/12/24
PS2.1.C	FLOOR PLAN LEVEL 1 CENTER FIELD PIPING	Rev. 1/12/24
P4.1	SANITARY SCHEDULES AND DETAILS	Rev. 1/12/24
<b>Electrical</b>		
EG.1	ELECTRICAL COVER SHEET	Rev. 1/12/24
EPL2.3.1	FIELD SERVICE BUILDING - POWER AND LIGHTING - NEW WORK & PANELBOARD SCHEDULE	Rev. 1/12/24
E4.3.1	DETAILS, SCHEDULES AND CONTROL DIAGRAMS	Rev. 1/12/24
<b>Electrical - Low Voltage</b>		
ES0.0	GENERAL NOTES AND LEGENDS	1/12/2024
ES0.1	GENERAL NOTES AND LEGENDS	1/12/2024
ES1.0.1	SITE PLAN	1/12/2024
ES1.2.1C	FIELD SERVICE BUILDING	1/12/2024
ES19.10	SECURITY DEVICE SCHEDULE - FIELD SERVICE BUILDING	1/12/2024
ES19.70	ACCESS CONTROL DETAILS - FIELD SERVICE BUILDING	1/12/2024
ES19.71	ACCESS CONTROL DETAILS - FIELD SERVICE BUILDING	1/12/2024
ES19.80	VIDEO SURVEILLANCE DETAILS - FIELD SERVICE BUILDING	1/12/2024

**\* The Project Manual is noted as follows:**

NC STATE UNIVERSITY  
Doak Field Enhancements  
Project Manual - Field Service Building  
Construction Documents  
January 12, 2024



# PRELIMINARY

## NCSU - DOAK FIELD ENHANCEMENT PHASE 1 - ENABLING



ID	Task Name	Duration	Start	Finish	
1	<b>PHASE 1 - (ENABLING)</b>	<b>242 days</b>	<b>Thu 11/30/23</b>	<b>Wed 11/6/24</b>	<p><b>PHASE 1 - (ENABLING)</b></p> <ul style="list-style-type: none"> <li>Preconstruction <ul style="list-style-type: none"> <li>General</li> <li>CD Plan Documents (Bid Doc's)</li> <li>Prequalification Review</li> <li>GMP Submission Rev. (GMP 01, 02, 03)</li> <li>NCSU / SCO GMP Review (GMP-01)</li> <li>GMP Contract</li> <li>Prequal Notifications Complete</li> <li>GMP-02 Submission (GMP 02, 03)</li> <li>NCSU / SCO GMP Review (GMP-02)</li> <li>CD Plan Review (SCO - Final - Phase 1)</li> </ul> </li> <li>PEMB (Steel Mat. &amp; Labor / GMP-01) <ul style="list-style-type: none"> <li>Notice of Award (GMP-01 Only)</li> <li>Bid Process (PEMB Only)</li> <li>Pre-Bid Conference (PEMB Only)</li> <li>Bid Date (PEMB Only)</li> <li>Bid Tab Review/Verify (PEMB Only)</li> <li>GMP-01 vs. CD Bid Reconciliation</li> <li>PEMB Contractor Selection</li> <li>PEMB - Notice to Proceed (Order PEMB)</li> </ul> </li> <li>Phase 1 (GMP #2) - Enabling <ul style="list-style-type: none"> <li>Notice of Award (GMP-02 #2 Only)</li> <li>Notice to Bid (SCO / Phase 1)</li> <li>Bid Process (Phase 1)</li> <li>Pre-Bid Conference (Phase 1)</li> <li>Bid Date (Phase 1)</li> <li>Bid Tab Review/Verify (Phase 1)</li> <li>CD Bid vs. GMP Reconciliation (GMP #2)</li> <li>CD Confirmation - Notice to Proceed</li> <li>Subcontractor Selection</li> </ul> </li> <li>Procurement <ul style="list-style-type: none"> <li>PEMB Shop Drawings</li> <li>Subcontracts / Purchase Orders</li> <li>Precast Materials - Site/Storm</li> <li>Precast Cistern</li> <li>Concrete / Reinforcing</li> <li>PEMB Fab &amp; Deliver</li> <li>HVAC Equipment</li> <li>Electrical Gear</li> <li>Synthetic Turf / Netting / Misc.</li> </ul> </li> </ul>
2	<b>PRECONSTRUCTION</b>	<b>102 days</b>	<b>Thu 11/30/23</b>	<b>Wed 4/24/24</b>	
3	<b>General</b>	<b>69 days</b>	<b>Thu 11/30/23</b>	<b>Fri 3/8/24</b>	
4	CD Plan Documents (Bid Doc's)	44 days	Thu 11/30/23	Fri 2/2/24	
5	Prequalification Review	10 days	Mon 12/11/23	Fri 12/22/23	
6	GMP Submission Rev. (GMP 01, 02, 03)	0 days	Tue 12/19/23	Tue 12/19/23	
7	NCSU / SCO GMP Review (GMP-01)	10 days	Wed 12/20/23	Fri 1/5/24	
8	GMP Contract	45 days	Mon 1/8/24	Fri 3/8/24	
9	Prequal Notifications Complete	0 days	Fri 2/2/24	Fri 2/2/24	
10	GMP-02 Submission (GMP 02, 03)	0 days	Fri 2/2/24	Fri 2/2/24	
11	NCSU / SCO GMP Review (GMP-02)	14 days	Fri 2/2/24	Wed 2/21/24	
12	CD Plan Review (SCO - Final - Phase 1)	10 days	Mon 2/5/24	Fri 2/16/24	
13	<b>PEMB (Steel Mat. &amp; Labor / GMP-01)</b>	<b>55 days</b>	<b>Fri 1/5/24</b>	<b>Fri 3/22/24</b>	
14	Notice of Award (GMP-01 Only)	0 days	Fri 1/5/24	Fri 1/5/24	
15	Bid Process (PEMB Only)	23 days	Tue 2/6/24	Thu 3/7/24	
16	Pre-Bid Conference (PEMB Only)	0 days	Wed 2/14/24	Wed 2/14/24	
17	Bid Date (PEMB Only)	0 days	Thu 3/7/24	Thu 3/7/24	
18	Bid Tab Review/Verify (PEMB Only)	2 days	Fri 3/8/24	Mon 3/11/24	
19	GMP-01 vs. CD Bid Reconciliation	5 days	Tue 3/12/24	Mon 3/18/24	
20	PEMB Contractor Selection	2 days	Wed 3/20/24	Thu 3/21/24	
21	PEMB - Notice to Proceed (Order PEMB)	0 days	Fri 3/22/24	Fri 3/22/24	
22	<b>Phase 1 (GMP #2) - Enabling</b>	<b>44 days</b>	<b>Thu 2/22/24</b>	<b>Wed 4/24/24</b>	
23	Notice of Award (GMP-02 #2 Only)	0 days	Thu 2/22/24	Thu 2/22/24	
24	Notice to Bid (SCO / Phase 1)	0 days	Fri 2/23/24	Fri 2/23/24	
25	Bid Process (Phase 1)	28 days	Mon 2/26/24	Wed 4/3/24	
26	Pre-Bid Conference (Phase 1)	0 days	Fri 3/8/24	Fri 3/8/24	
27	Bid Date (Phase 1)	0 days	Wed 4/3/24	Wed 4/3/24	
28	Bid Tab Review/Verify (Phase 1)	5 days	Thu 4/4/24	Wed 4/10/24	
29	CD Bid vs. GMP Reconciliation (GMP #2)	5 days	Thu 4/11/24	Wed 4/17/24	
30	CD Confirmation - Notice to Proceed	0 days	Wed 4/17/24	Wed 4/17/24	
31	Subcontractor Selection	5 days	Thu 4/18/24	Wed 4/24/24	
32	<b>Procurement</b>	<b>123 days</b>	<b>Mon 3/25/24</b>	<b>Wed 9/11/24</b>	
33	PEMB Shop Drawings	30 days	Mon 3/25/24	Fri 5/3/24	
34	Subcontracts / Purchase Orders	20 days	Wed 4/24/24	Tue 5/21/24	
35	Precast Materials - Site/Storm	50 days	Fri 4/26/24	Thu 7/4/24	
36	Precast Cistern	95 days	Fri 4/26/24	Thu 9/5/24	
37	Concrete / Reinforcing	35 days	Fri 5/3/24	Thu 6/20/24	
38	PEMB Fab & Deliver	60 days	Mon 5/6/24	Fri 7/26/24	
39	HVAC Equipment	80 days	Thu 5/9/24	Wed 8/28/24	
40	Electrical Gear	90 days	Thu 5/9/24	Wed 9/11/24	
41	Synthetic Turf / Netting / Misc.	50 days	Thu 5/16/24	Wed 7/24/24	

# PRELIMINARY

## NCSU - DOAK FIELD ENHANCEMENT PHASE 1 - ENABLING



ID	Task Name	Duration	Start	Finish																								
42	Coiling Overhead Doors	50 days	Thu 5/30/24	Wed 8/7/24	Coiling Overhead Doors																							
43	<b>CONSTRUCTION</b>	<b>130 days</b>	<b>Thu 5/9/24</b>	<b>Wed 11/6/24</b>	<b>CONSTRUCTION</b>																							
44	Mobilization / Logistics	5 days	Thu 5/9/24	Wed 5/15/24	Mobilization / Logistics																							
45	Erosion Control	7 days	Mon 5/13/24	Tue 5/21/24	Erosion Control																							
46	Demo / Clearing / Grading / Sitework	15 days	Thu 5/16/24	Wed 6/5/24	Demo / Clearing / Grading / Sitework																							
47	Survey / Building Layout	7 days	Tue 5/28/24	Wed 6/5/24	Survey / Building Layout																							
48	Utilities (Sewer / Water)	20 days	Thu 6/6/24	Wed 7/3/24	Utilities (Sewer / Water)																							
49	Footings / Foundation / Floor Slab	15 days	Fri 6/21/24	Thu 7/11/24	Footings / Foundation / Floor Slab																							
50	Electrical Service	8 days	Mon 6/24/24	Wed 7/3/24	Electrical Service																							
51	Plumbing Rough-in	4 days	Fri 6/28/24	Wed 7/3/24	Plumbing Rough-in																							
52	Asphalt Patch Repair	4 days	Thu 6/27/24	Tue 7/2/24	Asphalt Patch Repair																							
53	Segmental Retaining Wall	25 days	Thu 7/4/24	Wed 8/7/24	Segmental Retaining Wall																							
54	Stormwater Excavation / Piping / Structures	20 days	Fri 7/12/24	Thu 8/8/24	Stormwater Excavation / Piping / Structures																							
55	PEMB Erection	25 days	Mon 8/5/24	Fri 9/6/24	PEMB Erection																							
56	Cistern Installation	25 days	Fri 9/6/24	Thu 10/10/24	Cistern Installation																							
57	GWB Installations	8 days	Mon 9/9/24	Wed 9/18/24	GWB Installations																							
58	Backfill / Fine Grade / Misc.	10 days	Mon 9/9/24	Fri 9/20/24	Backfill / Fine Grade / Misc.																							
59	Electrical Rough-in	15 days	Tue 9/10/24	Mon 9/30/24	Electrical Rough-in																							
60	HVAC Rough-in / Distribution	5 days	Wed 9/11/24	Tue 9/17/24	HVAC Rough-in / Distribution																							
61	Insulation (Interior)	2 days	Fri 9/13/24	Mon 9/16/24	Insulation (Interior)																							
62	HVAC Equipment	4 days	Wed 9/18/24	Mon 9/23/24	HVAC Equipment																							
63	HVAC Controls	5 days	Wed 9/18/24	Tue 9/24/24	HVAC Controls																							
64	Paint (Prime & 1st Coat)	10 days	Thu 9/19/24	Wed 10/2/24	Paint (Prime & 1st Coat)																							
65	Doors / Hardware	2 days	Thu 9/19/24	Fri 9/20/24	Doors / Hardware																							
66	Coiling Overhead Doors	4 days	Thu 9/19/24	Tue 9/24/24	Coiling Overhead Doors																							
67	Fencing	5 days	Mon 9/23/24	Fri 9/27/24	Fencing																							
68	Electrical Gear	3 days	Tue 9/24/24	Thu 9/26/24	Electrical Gear																							
69	Flooring / Ceilings	5 days	Fri 9/27/24	Thu 10/3/24	Flooring / Ceilings																							
70	Rough-in Inspections Complete	0 days	Mon 9/30/24	Mon 9/30/24	Rough-in Inspections Complete																							
71	Lighting	5 days	Tue 10/1/24	Mon 10/7/24	Lighting																							
72	Electrical Devices	10 days	Thu 10/3/24	Wed 10/16/24	Electrical Devices																							
73	Paint (Final Coat)	10 days	Thu 10/3/24	Wed 10/16/24	Paint (Final Coat)																							
74	Plumbing Fixtures	2 days	Fri 10/4/24	Mon 10/7/24	Plumbing Fixtures																							
75	Overhead Inspections Complete	0 days	Mon 10/7/24	Mon 10/7/24	Overhead Inspections Complete																							
76	Driveway / Access Stone	3 days	Fri 10/11/24	Tue 10/15/24	Driveway / Access Stone																							
77	Accessories	2 days	Wed 10/9/24	Thu 10/10/24	Accessories																							
78	Site Remediation / Landscaping	10 days	Wed 10/16/24	Tue 10/29/24	Site Remediation / Landscaping																							
79	Synthetic Turf / Netting / Misc.	8 days	Fri 10/18/24	Tue 10/29/24	Synthetic Turf / Netting / Misc.																							
80	Final Inspections Complete	0 days	Tue 10/29/24	Tue 10/29/24	Final Inspections Complete																							
81	Punch List / Misc.	5 days	Wed 10/30/24	Tue 11/5/24	Punch List / Misc.																							
82	Beneficial Occupancy	0 days	Wed 11/6/24	Wed 11/6/24	Beneficial Occupancy																							

# NCSU Doak Field Enhancement

## Preliminary Enabling Projects Logistics Planning

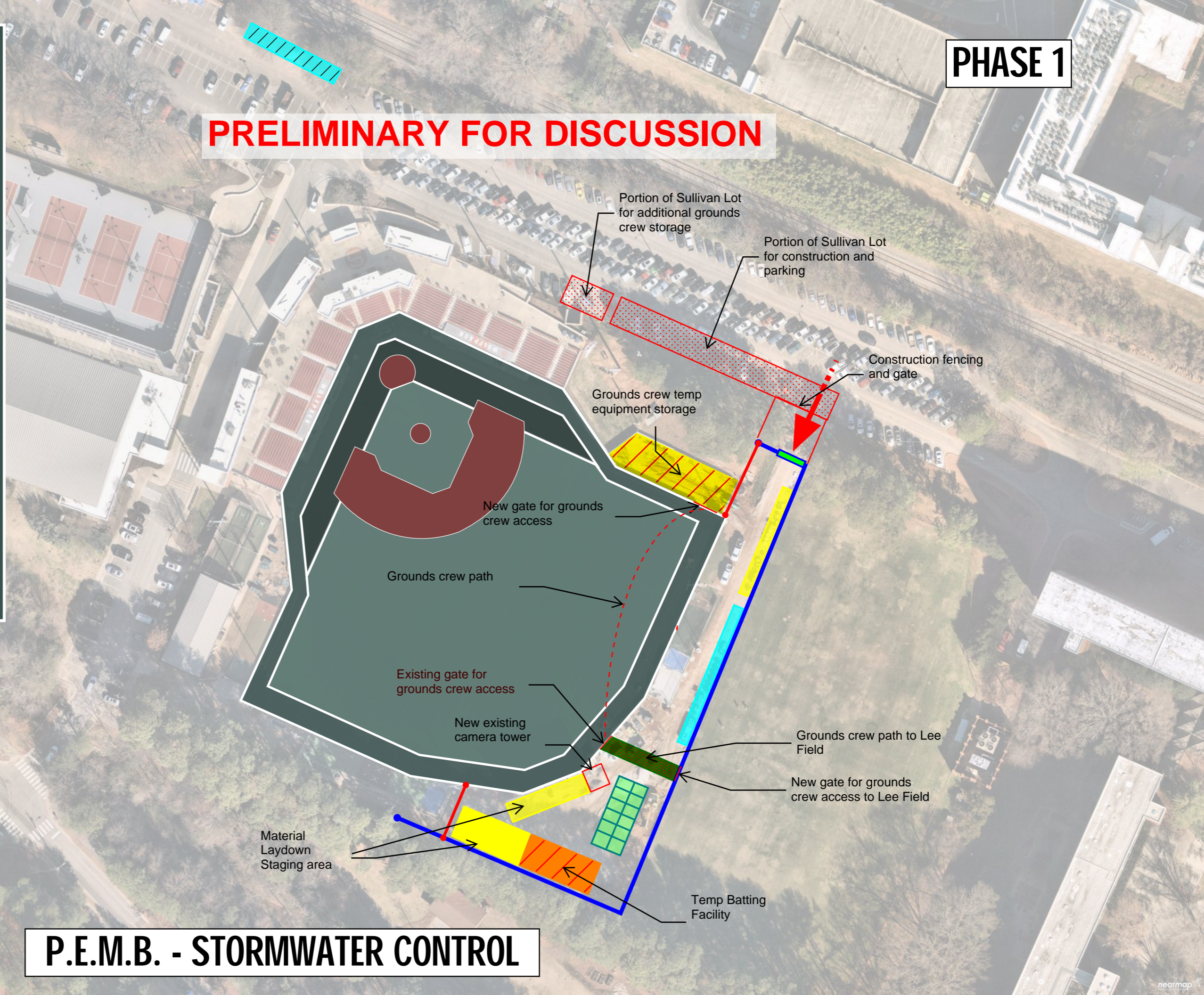
-  EXISTING FENCE
-  EXISTING GATE
-  CONSTRUCTION FENCE
-  CONSTRUCTION ACCESS
-  TERRACED SEATING CONSTRUCTION AREA
-  TEMP BATTING FACILITY
-  LAYDOWN / STAGING
-  CONTRACTOR PARKING
-  CONTRACTOR OVERFLOW PARKING
-  CONCRETE PAD
-  STORMWATER CONTROL UNDERGROUND

**ROMEOGUEST**  
A NEW SOUTH COMPANY

**RBI**  
RIGHT BUILT INTERNATIONAL

**PHASE 1**

**PRELIMINARY FOR DISCUSSION**



**P.E.M.B. - STORMWATER CONTROL**



# MASTER SERVICES AGREEMENT

MSA NO.

DATE:

TO:

THIS MASTER SERVICES AGREEMENT ("MSA") made under seal as of the date set forth above by and between \_\_\_\_\_ having its principal office at \_\_\_\_\_ (hereinafter called "Subcontractor") and New South Construction Company LLC, having its principal office at 1180 West Peachtree St, Suite 700 Atlanta, GA 30309 (hereinafter called "Contractor").

WITNESSETH: That Subcontractor and Contractor, for the consideration hereinafter named, agree as follows:

In consideration of the mutual agreements and covenants set forth herein and the sufficiency and receipt of which is hereby acknowledged and agreed upon, Contractor and Subcontractor enter into this MSA setting forth the terms and conditions that govern the activities of the parties.

## 1. PURPOSE

The primary purpose of this MSA is to provide the standard terms and conditions for the provision of subcontract services during the term of this MSA in accordance with any Project Statement issued during the term. Project Statements shall be substantially in the form attached to this MSA as Attachment 2, or in Contractor's then-existing Project Statement form. All transactions between Contractor and Subcontractor during the term of this MSA shall be covered by this MSA, unless the parties agree otherwise in writing, which writing shall note that the terms of this MSA do not apply to the transaction described therein. Further, if this MSA is executed after the start of work on any existing Project, this MSA shall be deemed effective as of the start of the Project.

## 2. SCOPE

Subcontractor shall furnish and pay for all materials, labor, services, supplies, scaffolding, equipment, tools appliances, and everything necessary for completion and functional installation of its scope of Work as set forth in any Project Statement and in accordance with the Contract Documents that form a part of the Contract between Owner and Contractor for each such Project. It shall be Subcontractor's duty and obligation to request in writing a copy of the Owner Contract or other Contract Documents for its review prior to starting work on each Project.

## 3. CONSENT TO ELECTRONIC TRANSACTION

Contractor and Subcontractor both agree to this MSA and any related transactions being conducted by electronic means in accordance O.C.G.A. §§ 10-12-5. Further, Subcontractor consents to and acknowledges that this MSA and related transactions may be executed, recorded and stored in electronic format and shall be given full legal effect in accordance with the Uniform Electronic Transactions Act, as set forth in O.C.G.A. §§ 10-12-1 et. seq.

Subcontractor acknowledges that Contractor has NOT inhibited Subcontractor from storing or printing this MSA and its related documents. Subcontractor expressly acknowledges that it has had the opportunity to store and/or print this MSA and any desired exhibits or attachments. This MSA may be executed electronically and in counterparts, which together shall constitute the entire agreement. Electronic signatures, copies, and photocopies of this MSA shall have the same force and effect as the original. Subcontractor agrees and stipulates that the "electronic signature" provided for any documents submitted in accordance with this MSA or otherwise to Contractor, online or otherwise electronically submitted, shall have the same affect and legitimacy as if submitted on hard copies with handwritten signatures.

4. MASTER AGREEMENT/TERM

The initial term of this MSA shall be for a period of one (1) year from the earlier date of last signature by the parties or the start of a Project ongoing as of the date of the last signature and shall continue after the initial term for successive one (1) year terms unless (a) terminated by Contractor as provided under the terms and conditions hereof, or (b) terminated by Subcontractor by providing thirty (30) days written notice to Contractor, provided that Subcontractor does not at that time have any outstanding bids or pricing to Contractor and has satisfied all of its active obligations to perform work under any existing Project Statement.

Subcontractor and Contractor have entered into this MSA to establish mutually agreeable terms and conditions that will govern all transactions between the parties. Upon any termination of this MSA, all obligations of the parties, including warranty and maintenance commitments, shall continue with respect to each of the Project Statements signed by both parties prior to termination.

5. ATTACHMENTS/EXHIBITS

Subcontractor and Contractor hereby agree to the covenants representations, warranties, covenants, provisions and the terms of the following items, each of is made a part of this MSA and which the parties hereto have reviewed in their entirety.

<u>Attachment/ Exhibit</u>	<u>Name of Attachment/Exhibit</u>	<u>Initials of Subcontractor indicating receipt and acceptance of the terms thereof</u>
Attachment 1	Terms and Conditions of Contract	Acceptance: [     ]
Attachment 2	Sample Project Statement	Acceptance: [     ]
Exhibit A	Subcontractor's Request for Payment Affidavit	Acceptance: [     ]
Exhibit B	Subcontractor's Sub-Subcontractor and Supplier Affidavit	Acceptance: [     ]
Exhibit C	Contractor's Standard Accident Prevention Program for Subcontractors	Acceptance: [     ]
Exhibit D	Request for Change Order	Acceptance: [     ]
Exhibit E	Change Order Form	Acceptance: [     ]
Exhibit F	Subcontractor Immigration Compliance Documents	Acceptance: [     ]
Exhibit G	Bond Forms	Acceptance: [     ]
Exhibit H	EFT Authorization Form	Acceptance: [     ]

The definitions given to the terms defined in this MSA shall be the definitions for the capitalized terms in each of the above Exhibits and Attachments unless such term is otherwise defined therein.

All Requests for Payment, invoices, and associated materials shall be sent via e-mail to [accounting@newsouthconstruction.com](mailto:accounting@newsouthconstruction.com) and will not be deemed received if transmitted in any other manner or directed to any other recipient. No single transmission shall be larger than 25 megabytes.

6. MISCELLANEOUS PROVISIONS

No negotiations, oral agreements, or other understanding by the parties shall in any way modify this MSA, or the terms or the conditions hereof. This MSA contains the complete agreement between the parties and shall take precedence over any prior agreement in relation to any matter set forth herein, and any prior agreements or other understandings are void unless expressly set forth herein. Any terms or conditions set forth in and/or contained within Subcontractor's invoices or any other of Subcontractor's document(s) shall not alter, supersede or modify the obligations and duties set forth in this MSA, regardless of any resulting Contractor's acknowledgement or signature on Subcontractor's invoices. This MSA can only be modified and/or altered by a Project Statement or other written agreement executed by an officer of both Contractor and Subcontractor.

Subcontractor acknowledges that it has either sought independent legal counsel or has had ample opportunity to do so before execution of this MSA and all associated documents, and that it has thoroughly reviewed and negotiated the terms of the MSA and that the terms of the MSA shall not be construed against Contractor in the event of an ambiguity in the documents.

Even if this MSA is executed after commencement of Subcontractor's performance of an existing Project(s), the terms and conditions of this MSA shall apply to all work performed by Subcontractor for such existing Project(s).

This MSA shall be considered executed at Contractor's principal office address set forth above and subject to the laws of State of Georgia. Furthermore, the parties consent to the personal jurisdiction of the courts for the County of Gwinnett.

EXECUTED AS OF THE DATE SET FORTH ABOVE.

**CONTRACTOR:**

**New South Construction Company LLC**

By: \_\_\_\_\_  
Authorized Signature

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**INITIAL ONLY ONE:**

- No modifications were made to Attachment 1 - Terms & Conditions of Contract
- Modifications were made to Attachment 1 - Terms & Conditions of Contract

**SUBCONTRACTOR:**

:

By: \_\_\_\_\_  
Authorized Signature

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**INITIAL ONLY ONE:**

- No modifications were made to Attachment 1 - Terms & Conditions of Contract
- Modifications were made to Attachment 1 - Terms & Conditions of Contract

# ATTACHMENT 1

## TERMS AND CONDITIONS OF CONTRACT

### 1. AGREEMENT:

- 1.1. The Owner Contract for each Project, including its Contract Documents, is hereby incorporated into each Project Statement by this reference. A copy of the Owner Contract, including its Contract Documents, shall be made available to Subcontractor for each Project for which Subcontractor enters into a Project Statement, and Subcontractor shall be bound by all the terms of each such Owner Contract, including its Contract Documents, and shall, with respect to each such Project, assume towards Contractor all of the obligations and the responsibilities that Contractor by those instruments assumes towards Owner. It shall be Subcontractor's duty to request any incorporated documents it desires to review, including but not limited to the Owner Contract. Subcontractor acknowledges that any failure to review shall not excuse any of its obligations arising from any incorporated Contract Documents. To the extent of any conflict between the Owner Contract, the Contract Documents, this MSA, and any Project Statement, the term or provision that imposes a greater obligation on Subcontractor shall govern to the extent not in conflict with applicable law. To the extent of any direct conflict between this MSA and any Project Statement, the Project Statement shall govern.
- 1.2. Subcontractor and the Project Statement may be subject to the approval of the Architect and/or Owner for each Project. If the Architect and/or Owner disapprove of Subcontractor and/or the Project Statement, such Project Statement shall be considered terminated by Owner in accordance with Section 20.1 below.
- 1.3. All Work performed under this MSA shall be completed in conformance with all federal, state, city, county, and local ordinances and authorities; all requirements of federal, state, city, county and local building codes which are applicable to the work; local sanitary laws and rules and regulations; and all orders and interpretations of such ordinances, requirements, laws, rules and regulations as may be set forth herein, in each Owner Contract, or the Contract Documents thereof. Subcontractor shall furnish without any extra charge any additional materials and labor (x) that may be required to comply with such codes, ordinances, requirements, laws, rules and regulations, and (y) that are not specifically included in the respective Project Statement or the Contract Documents but are reasonably inferable therefrom and/or are necessary for the proper completion of the work for such Project.
- 1.4. Subcontractor hereby represents, warrants and covenants that those performing work on its behalf are properly classified and that: (x) to the extent that Subcontractor has, has had, or will have independent contractors, such independent contractors are, were, or will be properly classified as independent contractors and were not, should not have been, or shall not be required to be classified as employees of Subcontractor under any applicable law, including any law, rule, or regulation of the Internal Revenue Service ("IRS"), (y) no employee or independent contractor of Subcontractor has ever filed an IRS Form SS-8 with respect to Subcontractor, and (z) Subcontractor has never filed a Form SS-8 with respect to any employee or independent contractor of Subcontractor.
- 1.5. Definitions:
  - 1.5.1. Project shall refer to any respective construction project for which Subcontractor shall provide goods and services to Contractor in connection with a Project Statement or otherwise; all such work shall be required to be performed in accordance with this MSA.
  - 1.5.2. Contractor or NSC shall refer to NSC Construction Company, LLC dba New South Construction Company LLC and its successors and assigns. Furthermore, Contractor or NSC shall also include any joint venture, affiliated entity, or successor entity referenced as Contractor on any Project Statement where such entity is associated with NSC as a joint venture, affiliated entity, or successor entity.
  - 1.5.3. Subcontractor shall refer to the party named on the face of this MSA providing goods and services as referenced on each related Project Statement or as otherwise directed by Contractor.
  - 1.5.4. With respect to each Project, Owner shall refer to that individual or entity that has a contractual relationship with Contractor to provide Owner with goods or services for such Project, including but not limited to general construction services, construction management services, design-build services and/or related services of any Project for which Subcontractor and Contractor enter into a Project Statement pursuant to this MSA.

1.5.5. With respect to each Project, Contract Documents shall refer to the contract between Owner and Contractor (hereinafter called "Owner Contract"), plus any General Conditions and any Supplemental Conditions, Modifications, Drawings, Specifications, the Contract Documents as defined therein, and any other documents referenced therein or otherwise incorporated.

1.5.6. Any terms defined in this MSA shall have the same meaning within these Terms and Conditions of Contract.

## **2. NO ASSIGNMENT OR TRANSFER OF CONTRACT RIGHTS:**

2.1. Subcontractor shall not let, assign, assign the proceeds of, subcontract to others, piecemeal, or otherwise transfer this MSA, any related Project Statement, or any part hereof or thereof, or any interest herein or therein, without the written consent of Contractor. Subcontractor agrees not to transfer actual or beneficial ownership or control of Subcontractor without prior written notice to and approval of Contractor. Failure to seek the approval of Contractor will result in default of this MSA.

2.2. For the sake of clarity and in no way limiting Contractor's ability to assign any Project Statement arising from this MSA in whole or in part as Contractor chooses, Subcontractor hereby agrees and acknowledges that Contractor may assign any Project Statement to Owner or an affiliated entity at any time and such assignment shall not require the action or approval of Subcontractor. Further, any subcontract, purchase order, or other agreement related to the Project between Subcontractor and any of its sub-subcontractors or suppliers shall be freely assignable to Contractor and Owner.

## **3. SUBCONTRACT SUM:**

3.1. Payment to Contractor by Owner for the work performed by Subcontractor under any Project Statement shall be an absolute condition precedent to Contractor's obligation to pay Subcontractor. There shall be no obligation whatsoever for Contractor to pay Subcontractor unless and until Contractor is paid for the work or materials for which Subcontractor seeks payment. Subcontractor recognizes that this agreement is a "Pay Only If and When Paid" arrangement. No payment to Subcontractor shall operate as an approval of Subcontractor's work or material or any part thereof.

3.2. In conjunction with each Project Statement, Subcontractor is required to thoroughly review the Contract Documents and approve the Subcontract Sum in view of the work to be performed under the Project Statement. Subcontractor recognizes that Contractor shall rely and will act in reliance on the Subcontract Sum in entering into contractual agreements with Owner and other subcontractors. Subcontractor agrees that no modification or termination of any Project Statement shall be made due to any error or omission on the part of Subcontractor with respect to the Subcontract Sum specified with a Project Statement or the full requirements of the Contract Documents.

3.3. The Subcontract Sum set forth on each Project Statement shall be modified (increased or decreased) only under those circumstances where Subcontractor's Scope of Work for that Project has changed in accordance with the terms of this MSA. The modification shall only be in the form of a written Change Order. All Change Orders issued to a Project Statement under this MSA shall be subject to all of the terms of this MSA, the Project Statement for the Project, and the Contract Documents for the Project.

3.4. Subcontractor warrants and acknowledges that it is responsible for and bears the burden of any risk of increase in the costs of supplies, labor or other items necessary to complete its work on any Project. Subcontractor shall not be entitled to (a) any increase in the Subcontract Sum for any Project, (b) damages of any sort, (c) additional compensation or (d) modification or rescission of any duties or obligations arising under this MSA or any Project Statement based upon any increases in the aforementioned costs, except to the extent that Contractor is entitled to compensation for such cost increases from Owner, and then only to the extent of any amounts that Contractor, on behalf of Subcontractor, actually receives from Owner for such cost increases.

## **4. PAYMENT AGREEMENT:**

4.1. With respect to each Project for which Contractor and Subcontractor enter into a Project Statement, Contractor agrees to pay Subcontractor on a progress payment basis for the value of labor and materials incorporated by Subcontractor in the Work and of materials stored on-site and off-site, if authorized and paid for by Owner, in a manner acceptable to Contractor and Owner, less retainage on the cumulative cost of the work-to-date, less the aggregate of previous payments.



- 4.2. Subcontractor recognizes that as a material condition precedent to entering into this MSA, Subcontractor has agreed to fully prepare, submit and execute all of its applications for payment electronically as directed by Contractor, or, upon prior approval of Contractor, in the hard copy form provided in Subcontractor's Request for Payment Affidavit and Subcontractor's Sub-Subcontractor and Supplier Affidavit, as is effect from time to time, a current example of which is attached as Exhibit A and Exhibit B, or as reasonably required by Contractor. Contractor, at its sole discretion, has the absolute right to change the payment management system. This MSA and all documents executed in connection with this MSA may be executed electronically and in counterparts, which together shall constitute the entire agreement. Electronic signatures, copies, and photocopies of this MSA and such other documents shall have the same force and effect as the original. Subcontractor agrees and stipulates that the "electronic signature" provided for any documents submitted in accordance with this MSA or otherwise to Contractor, online or otherwise electronically submitted, shall have the same affect and legitimacy as if submitted on hard copies with handwritten signatures. Additionally, Subcontractor's username and password for any Project-related websites, portals or electronic-based submissions shall be kept strictly confidential and shall only be provided to those employees or officers with the authority to bind Subcontractor. Furthermore, Subcontractor, by entering into this MSA, hereby consents to be bound by its "electronic signature" and waives any and all claims or defenses related to the authenticity and binding authority resulting from or related to any documents submitted electronically.
- 4.3. Subcontractor shall make payments promptly of all amounts due and owing to its sub-subcontractors, laborers and materialmen for material and labor used in the performance of said work. All payments made to Subcontractor shall be considered to be paid as a constructive trust and earmarked for the pass-through payment of all amounts due and owing to Subcontractor's sub-subcontractors, laborers, and materialmen for labor and material used in the performance of said work or suitably stored, whether on-site or off-site.
- 4.4. Subject to the other conditions of this MSA, Contractor agrees to payments of the Subcontract Sum for each Project for which Contractor and Subcontractor enter into a Project Statement after the following criteria has been met:
- 4.4.1. Progress Payments:
- 4.4.1.1. Payment has been received by Contractor from Owner.
- 4.4.1.2. Fully executed MSA and Project Statement, including, without limitation, fully completed Exhibit "F."
- 4.4.1.3. Current Certificate of Insurance, in the form of Exhibit "6" to the Project Statement for such Project.
- 4.4.1.4. Executed Payment and Performance Bonds, as required.
- 4.4.1.5. Fully executed and notarized Exhibit "A" Subcontractor's Request for Payment Affidavit, and Exhibit "B" Subcontractor's Sub-Subcontractor and Supplier Affidavit, in electronic format or, with Contractor's prior approval, hard copy.
- 4.4.1.6. Subcontractor lien release.
- 4.4.1.7. Sub-subcontractor and/or supplier lien releases, if required.
- 4.4.1.8. Execution of all outstanding Change Orders.
- 4.4.1.9. Other documentation as required by the Contract Documents or reasonably required by Contractor or Owner.
- 4.4.2. Final Payment: Provided that Contractor has received final payment from Owner, documentation that may, at Contractor's sole option, be required before Final Payment of the Subcontract Sum for each Project to Subcontractor includes the following:
- 4.4.2.1. Acceptance of Subcontractor's work on the Project by Owner, Architect (if applicable) and Contractor.
- 4.4.2.2. Completion of Owner's, Architect's, and Contractor's punch lists.
- 4.4.2.3. Completion of all of Subcontractor's Scope of Work and the removal of all jobsite equipment and excess materials not incorporated into the final product.
- 4.4.2.4. Fully executed and notarized Exhibit "A" Subcontractor's Request for Payment Affidavit, and Exhibit "B" Subcontractor's Sub-Subcontractor and Supplier Affidavit, in electronic format or, with Contractor's prior approval, hard copy.
- 4.4.2.5. Fully executed Final Change Order.
- 4.4.2.6. Close-Out documents as required by Contract Documents.
- 4.4.2.7. Executed and notarized Exhibit "5" Waiver and Release upon Final Payment by Subcontractor, for Subcontractor as well as all suppliers and sub-subcontractors performing work or supplying materials under Subcontractor.
- 4.4.2.8. Executed and notarized Exhibit "5(B)" Final Affidavit and Waiver of Lien by Subcontractor, for Subcontractor as well as all suppliers and sub-subcontractors performing work or supplying materials under Subcontractor.
- 4.4.2.9. Warranty forms, in the form required by this Subcontract and/or as required by Contract Documents or as reasonably requested by Contractor.

- 4.4.2.10. Equipment manuals, as required by Contract Documents.
- 4.4.2.11. As-built drawings, as required by Contract Documents.
- 4.4.2.12. Such other documentation as Contractor may reasonably require as evidence that all labor and material accounts incurred by Subcontractor in connection with its work have been paid in full for any work or materials used on the Project.
- 4.4.2.13. Documentation of Subcontractor's insurance requirements, if any, surviving the completion of Subcontractor's Scope of Work.
- 4.5. If Contractor designates an online payment and/or document management system, Subcontractor agrees to register on such system and agrees to such system's terms and conditions. Further, Subcontractor shall submit all documents and invoicing in accordance with the time frames set forth in this MSA and the respective Project Statement, as well as the designated system's requirements and forms for the Project. Furthermore, if Contractor arranges for direct payments from such online payment and/or document management system, Subcontractor shall register for such payment system and accept payments via electronic transfer. At Contractor's sole discretion, Subcontractor shall accept all payments owed from Contractor via Electronic Fund Transfer, including but not limited to ACH transfers, direct deposits, and wire transfers. Subcontractor shall accurately complete and submit to Contractor the necessary information in the form set forth as Exhibit "H" hereto, and submit updated versions as needed to keep such information current.
- 4.5.1. Subcontractor stipulates that Contractor shall not be responsible for any payment issues arising out of Subcontractor's failure to provide and update timely or accurate payment details.
- 4.5.2. If Subcontractor fails to provide the information necessary for payment by Electronic Funds Transfer, or requests payment be made via check, Subcontractor (a) shall be considered paid in the amount of such check and (b) shall assume all risk and be responsible for the security of such check, once such check leaves Contractor's office, whether via U.S. Mail, statutory overnight delivery, other commercial firm that is regularly engaged in the business of document delivery, or courier. However, Contractor agrees to provide reasonable assistance to Subcontractor to recover any amounts stolen or otherwise wrongfully paid from any such check.
- 4.6. Subcontractor's invoice, complete with sufficient breakdown data to permit checking and approval, shall be as directed by Contractor: (a) delivered to Contractor, or (b) inputted by Subcontractor to Contractor's designated online payment management system in accordance with the schedule provided in the Project Statement for any month during which Subcontractor has performed work or furnished materials to a Project for which Subcontractor requests payment. Only one Subcontractor's Request for Payment (Exhibit "A") may be submitted each month by Subcontractor for each Project. Failure to provide an appropriate invoice (electronically if directed) by the required date will result in no payment being received by Subcontractor until the month following receipt by Contractor of an appropriate invoice.
- 4.7. Unless otherwise provided in the Contract Documents, and if approved in advance by Owner, applications for payment may include materials and equipment not incorporated in Subcontractor's Work but delivered to and suitably stored at the Project site or at some other location agreed upon in writing. Approval of payment applications for such stored items on or off the site shall be conditioned upon submission by Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to Owner and Contractor to establish Owner's title to such materials and equipment or otherwise protect Owner's and Contractor's interest therein, including transportation to the Project site. All costs for material storage shall be borne by Subcontractor and included in the Subcontract Sum. Subcontractor shall not make or cause to be made any contract for materials or equipment of any kind or nature whatsoever to be used in connection with the Work for a Project on a conditional sales or any other basis whereby the title to the equipment or materials does not pass to Owner upon payment by Owner for incorporation into the Project, free and clear of any lien, financing arrangement, or other impediment to title. Subcontractor acknowledges that upon payment by Owner, Owner shall have a secured interest in such materials and equipment. Subcontractor shall hold such materials and equipment in trust until incorporated into the Work. The covenants of this Section are separate, distinct and independent covenants and no default by Contractor under the terms of this MSA shall relieve or release Subcontractor of and from the covenants set forth in this Section.
- 4.8. Subcontractor shall be deemed to waive all rights to submit any claim for any cost for a Project not requested in the final Subcontractor's Request for Payment List for that Project, and shall be deemed to waive all rights to submit any claim for any cost for which proper documentation was not retained or does not exist.
- 4.9. The parties expressly acknowledge and agree that the provisions of any "prompt pay act" or other similar

State act requiring a time certain for payments relating to a construction project do not apply to this MSA, including but not limited to the Georgia Prompt Payment Act O.C.G.A. § 13-11-1 *et seq.*

## **5. PAYMENT WITHHELD; REFERENCE TO TERMINATION AND REMEDIES:**

- 5.1.1. Payments due to Subcontractor under this MSA may be withheld by Contractor on account of the following causes: failure to meet criteria set forth in this MSA or any related Project Statement in making application for payment, unexecuted MSA or Project Statement, defective work not remedied, claims filed or reasonable evidence indicating the probability of the filing of claims against the property, bond, Owner and/or Contractor related to the work of Subcontractor on a Project, encumbrances filed or existing against the property on which a Project is located arising from a Project Statement or Subcontractor, failure of Subcontractor to make payments properly to its sub-subcontractors or for material or labor, breach of this MSA or any Project Statement, or the reasonable belief of Contractor that the work to be performed under any Project Statement that remains unfinished cannot be completed for the balance then unpaid. If any of the foregoing said causes are not removed, if Subcontractor at any time shall refuse or neglect to supply adequate and competent supervision or fails to provide properly skilled workmen or proper materials of the proper quality or quantity necessary for the performance of the work under any Project Statement, or fails in any respect to perform the work under any Project Statement with promptness and diligence, or fails to perform or to adhere to any agreement on its part herein contained, Contractor shall have the option, after two (2) days' written notice to Subcontractor, to pay such claims and provide for such labor or materials and to deduct the cost thereof from any money due or thereafter to become due by Contractor to Subcontractor. Any work performed by supplemental forces in accordance with this Section or otherwise shall be deemed the Work of Subcontractor and part of the Work for which Subcontractor provides a warranty hereunder, unless otherwise noted in writing by Contractor; and moreover Subcontractor shall be responsible for the costs arising from the performance of such work by supplemental forces.
- 5.1.2. Subcontractor shall be liable to Contractor for, and indemnify and hold Contractor harmless from, all costs and damages Contractor incurs as a result of Subcontractor's failure to perform in accordance with the terms of this MSA. Subcontractor's failure to perform shall include the failure of its lower-tier subcontractors to perform. Subcontractor's liability shall include, but not be limited to, Contractor's (1) increased costs of performance, such as costs to supplement, extended overhead and other increased performance costs resulting from Subcontractor-caused delays, impacts, or improper Subcontractor Work; (2) warranty and rework costs; (3) liability to third parties; (4) excess re-procurement costs; (5) consultants' fees; and (6) attorneys' fees and related costs. If the remaining unpaid balance of the Subcontract Sum shall be insufficient to indemnify and hold Contractor harmless, Subcontractor shall pay to Contractor the difference plus 15% for administration on all costs and expenses within ten (10) days of demand.
- 5.2. Additionally, at Contractor's request and/or in the event of Subcontractor's failure to make proper payments to its sub-subcontractors and/or suppliers, Subcontractor shall cooperate in good faith to determine the amounts owed to such sub-subcontractors and suppliers, and shall endorse payments made jointly payable to Subcontractor and such sub-subcontractors and/or suppliers in order to satisfy claims. Subcontractor agrees to cooperate fully in the endorsement of any such joint check, and Subcontractor acknowledges that its failure to do so may result in equitable relief, including an injunction, and that Subcontractor agrees to pay all reasonable costs of Contractor associated with the pursuit of equitable relief. In the event that Subcontractor does not sign a joint check within five (5) days of issuance, Contractor may exercise the terms of Section 5.3 and Article 20. Contractor may provide written notice to Subcontractor that it intends to directly pay any of Subcontractor's suppliers or sub-subcontractors. Such written notice shall include the name of Subcontractor's sub-subcontractor or supplier and the amount that Contractor intends to pay directly to such sub-subcontractor or supplier. If Subcontractor fails to object with reasonable support, as determined in Contractor's sole discretion, within five (5) days of the notice, Subcontractor shall be deemed to have (a) waived any objection to direct payment of such amount, and (b) approved of and agreed to the (i) payment as specified in the written notice and (ii) a deductive change order reflecting such payment.
- 5.3. In addition to the foregoing rights and remedies, Contractor shall have the option to terminate the employment of Subcontractor per the terms of Article 20 and to utilize all remedies therein without further written notice to Subcontractor and to enter upon the premises of any Project on which Subcontractor is working pursuant to a Project Statement and take possession of all materials or appliances, of any kind whatsoever, thereon and to employ any other person or persons to finish the work on such Project(s) and to provide the materials therefor. In case of such termination of Subcontractor, Subcontractor shall not be entitled to receive any payment under this MSA or any related Project Statement that might be due, until said work shall be finished and payment in full therefor shall be made by Owner to Contractor; at which time, payment shall be made of the unpaid balance of the amount to be paid by Contractor to Subcontractor; but if such Contractor's

expenses shall exceed such unpaid balance, Subcontractor shall pay the difference to Contractor. Subcontractor's right to payment under this Section 5.3 shall also be subject to those conditions for payment set forth in this MSA and any relevant Project Statement. If Subcontractor shall at any time prior or subsequent to the execution of this MSA, have entered into another contract with Contractor and if there exists any default or threatened default by Subcontractor in its performance of this MSA, any related Project Statement, or such other contract, then Contractor shall have the right to withhold any and all the monies due or to become due to Subcontractor under this MSA or such other contract.

- 5.4. Contractor shall have the right to withhold, as an extraordinary reserve and/or to use as set off, and without limiting other rights and remedies, an amount reasonably sufficient to remedy a default by Subcontractor under this MSA, including any related Project Statement or other agreement between Contractor and Subcontractor.
- 5.5. For purposes of this Article 5, the terms Contractor and Subcontractor shall include any parents, affiliates, joint ventures, and subsidiaries of Contractor and Subcontractor, including any entity or joint venture in which Contractor or Subcontractor has an ownership interest, regardless of whether such interest is a partnership interest, joint venture interest, stock or shares in a corporation, membership interest in a limited liability company, or other equity interest.

## **6. SCHEDULE:**

- 6.1. At no additional cost to Contractor, Subcontractor agrees to commence the work for each Project Statement executed under this MSA when directed by Contractor, and to perform such work diligently and continuously within the timetable specified in the Project Schedule, as may be revised by Contractor. Subcontractor acknowledges that other trades are dependent upon such diligent and continuous performance of Subcontractor. If Subcontractor does not or cannot adhere to the timetable or sequencing defined in the Project Schedule for each such Project, Subcontractor shall be obligated, at the direction of Contractor, to furnish sufficient manpower and equipment and/or work overtime as required to bring Subcontractor's work back into adherence with the Project Schedule. Such recovery efforts shall be at the expense of Subcontractor, and Subcontractor shall not be entitled to an increase in the Subcontract Sum for such Project. Should multiple mobilizations be required to complete Subcontractor's scope of work for a Project, Subcontractor will likewise be responsible for the costs arising therefrom. Furthermore, in the event of one or more lost workdays during a normal workweek due to inclement weather or other uncontrollable circumstances, Subcontractor shall be required to work on Saturday as a make-up day with no increase in the Subcontract Sum.
- 6.2. Time is of the essence of this MSA and each Project Statement hereunder, and any breach of same shall go to the essence hereof, and Subcontractor, in agreeing to complete the work for each Project within the time set forth on each Project Statement, shall have taken into consideration and made allowances for all normal construction hindrances and delays incident to its work, including, without limitation, (i) the requirements of the Contract Documents, the location, condition, layout, access to the site, the Work, storage, and the nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, (v) other similar issues, and any considerations Owner requires of Contractor.
- 6.3. Subcontractor acknowledges that Contractor reserves the right to contact any and all of Subcontractor's suppliers, vendors, and sub-subcontractors to inquire and to assist with the status of any material to be used on any Project for which Subcontractor is performing work pursuant to a Project Statement. Contractor also reserves the right to inquire about Subcontractor's payments to the suppliers or sub-subcontractors. In no way shall rights reserved by Contractor hereunder relieve Subcontractor from the sole responsibility of procuring material in a timely fashion and performing the work for each Project in accordance with its Project Schedule.
- 6.4. If the Contract Documents for any Project for which Subcontractor is performing work pursuant to a Project Statement under this MSA should provide for liquidated or other damages for delay and such damages are so assessed against Contractor, then Contractor may assess the same damages against Subcontractor in proportion to Subcontractor's share of the responsibility for such delay, as reasonably estimated by Contractor. Subcontractor shall also be liable for all additional damages Contractor may incur as a result of Subcontractor's failure to complete Subcontractor's Work for such Project or any portion thereof in accordance with its Project Schedule.
- 6.5. Any "float time" present in any Project Schedule shall belong to Contractor and Subcontractor shall have no

damages for delay.

- 6.6. Notwithstanding any provision in a Project's Contract Documents to the contrary, if Subcontractor's performance of its work pursuant to a Project Statement is delayed, impacted, or interfered with by a force majeure event or acts of Owner, Contractor or other subcontractors, Subcontractor may request an extension of the time for the performance of the Project Statement within two (2) days of the onset of such delay, impact or interference, but shall to the fullest extent permitted by law not be entitled to any increase in the Subcontract Sum under such Project Statement or to damages or additional compensation as a consequence of such delays, impacts or interference, except to the extent that Contractor is entitled to compensation for such delays from Owner, and then only to the extent of any amounts that Contractor, on behalf of Subcontractor, actually receives from Owner for such delays.
- 6.7. Written Request for Extension: No allowance for an extension of time and/or additional compensation to perform the work under a Project Statement, for any cause whatsoever, shall be claimed by, or made to, Subcontractor, unless Subcontractor shall have made written request upon Contractor's Project Manager for such Project for such extensions within two (2) days after the alleged cause for any desired extension has occurred, or, if the contract between Owner and Contractor for such Project provides for a shorter period, within sufficient time to permit Contractor to give notice to Owner within the time allowed by the Owner Contract for such notice. DAILY REPORT ENTRIES SHALL NOT CONSTITUTE A WRITTEN REQUEST FOR EXTENSION OR NOTICE OF DELAY. Any Subcontractor request for additional time and/or compensation shall be in a form reasonably satisfactory to Owner and/or Contractor and at a minimum shall demonstrate the force majeure event or party and action causing said delay, the specific days impacted, and the specific effect per day of each alleged delay. Upon request, Subcontractor shall provide a schedule outlying all causes and effects for any delay and the steps being taken by the Subcontractor to mitigate the impacts of any delay.
- 6.8. When Extension Not Allowed: Additionally, no allowance of an extension of time to perform the work under a Project Statement shall, in any event, be made to Subcontractor for delay by Subcontractor in preparing drawings or in securing approval by an Architect or Engineer for such drawings when such drawings are not properly prepared or when Subcontractor, by the exercise of reasonable diligence and judgment, could have anticipated and avoided the delay.

## **7. JOB COORDINATION:**

- 7.1. Subcontractor acknowledges that the work to be performed under each Project Statement will take place amidst and in the vicinity of work to be performed by other subcontractors, and Subcontractor agrees to coordinate the work, under each such Project Statement, with other work being performed on the Project by other trades, so that Contractor shall not be delayed, impeded or inconvenienced by any act or omission of Subcontractor in completion of the Project within the timetable specified in the Owner Contract. Subcontractor understands that Contractor reserves the right to conduct Project meetings, including pre-construction and pre-installation, as needed through the course of each Project, and Subcontractor agrees to attend all such Project meetings as directed by Contractor with individuals authorized to provide reliable information and make commitments with regard to manpower and compliance with the timetable specified by Contractor. Subcontractor shall complete and submit to Contractor daily reports on each day that Subcontractor performs work on a Project.
- 7.2. It is specifically agreed and understood that Subcontractor shall coordinate all work as necessary with all interrelated trades, as well as other subcontractors involved with each Project, to ensure all items of work included in the Project Statement are completed in accordance with the Project's Contract Documents and the Project Schedule.
- 7.3. Prior to commencing any active work pursuant to a Project Statement, Subcontractor shall inspect all portions of the Project that may be affected by Subcontractor's work to determine whether they are suitable to receive Subcontractor's work. Subcontractor shall notify Contractor in writing of any objections to the condition of the Project prior to commencement of Subcontractor's work. Subcontractor's commencing work shall constitute acceptance by Subcontractor of all such affected portions of the Project as being suitable and of satisfactory condition to receive Subcontractor's work.
- 7.4. Subcontractor shall carefully review and give written notice to Contractor of any errors, inconsistencies or omissions it may discover in the Contract Documents for each Project prior to or subsequent to the entry of the Project Statement for such Project. Subcontractor shall be liable for any damages or additional costs incurred as a result of Subcontractor's failure to discover or provide advanced written notice to Contractor of

errors, inconsistencies or omissions in such Contract Documents.

- 7.5. Prior to using any Owner- or Contractor-supplied materials or equipment, Subcontractor shall carefully inspect and verify that all of the materials and equipment supplied comply with the Contract Documents for the Project and are otherwise appropriate for Subcontractor's work. Subcontractor shall notify Contractor in writing of any objections to the materials or equipment prior to commencement of Subcontractor's work. Subcontractor's commencing work shall constitute acceptance by Subcontractor of all such materials and equipment as being suitable and of satisfactory condition for Subcontractor's work.

## 8. CHANGES IN THE WORK:

- 8.1. No alterations shall be made in the work as shown or described in the Contract Documents for a Project, as modified by applicable codes, ordinances, requirements, laws, rules and regulations as set forth in each Project Statement, except on the prior written authorization of Contractor. Prior to authorization, Subcontractor shall propose the value of the work or materials to be added or omitted and any extension or deduction from the time of completion necessitated by the proposed change in work. Thereafter, Contractor shall review Subcontractor's proposed alteration and, subject to the written approval and acceptance by Contractor, which shall be in the sole discretion of Contractor, the amount shall be added to (if Subcontractor has not previously agreed to perform the additional work under the terms of the Project Statement) or deducted from the Subcontract Sum and time of completion for that Project. Any such change in the Subcontract Sum shall be billed in the monthly pay applications and may be determined by Contractor at its sole option in one of the following manners:
- 8.1.1. By mutual agreement of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by Contractor (See Exhibit "D" - Request for Change Order);
- 8.1.2. By unit price stated in the Project Statement or as subsequently mutually agreed upon on a time and material cost basis. In this event, Subcontractor shall submit a breakdown of labor hours and required materials on a daily basis for Contractor's signature. In the event that daily time and material records are not received by Contractor within two (2) days of performance, Subcontractor's right to any additional sums shall be deemed waived;
- 8.1.3. By direct costs for time and materials as proven by direct invoices and time sheets, plus ten percent (10%) for overhead AND profit; i.e. (Cost of the Work x **10**% = overhead and profit). Subcontractor shall submit costs on a daily basis for Contractor's signature, including a detailed breakdown of labor hours and required materials. In the event that daily time and material records are not received by Contractor within two (2) days of performance, Subcontractor's right to any additional sums shall be deemed waived;
- 8.1.4. Or as may be required in the Owner Contract for the Project.
- 8.2. In no event shall Subcontractor's overhead and profit exceed the markup permitted by the Contract Documents for the Project or the cost of such work plus ten percent (10%) (Cost of the Work x **10**% = overhead and profit), whichever is less. Subject to the other conditions of this MSA, **Subcontractor shall have no claim for the cost of additional work or for an extension of time (including, without limitation, claims for impact damages or for costs due to delay) unless such work and the cost and expenses thereof or time is stated on the face of a written change order and approved and accepted by Contractor on such written change order.** Any attempted reservation by Subcontractor of the right to subsequently claim any amount or extension of time not stated on the face of a written change order approved and accepted by Contractor shall be null and void. To the extent consistent herewith, all change orders issued under this MSA shall be subject to all terms of this MSA, the respective Project Statement, and the Owner Contract for the Project.
- 8.3. It is the responsibility of Subcontractor to review revised Contract Documents for a Project and respond in writing within five (5) calendar days after receipt of said documents, unless an earlier time period is required by the Contract Documents or necessary based on the project schedule, concerning changes in the scope of work, if any, as well as the corresponding pricing. Failure to respond to revised documents issued to Subcontractor, in accordance with the conditions set forth herein, will constitute a waiver of any right of Subcontractor to request an adjustment to either the Subcontract Sum or Project Schedule for that Project.
- 8.4. Subcontractor expressly agrees and stipulates that it shall have no claim for any additional time or sums via Change Order or otherwise if the Request for Change Order is submitted after the appropriate notice period has expired. **Should Subcontractor perform any change in its Work for a Project without first executing**

**a Change Order addressing such change or receiving a written directive, Subcontractor shall thereby waive any and all claims for any adjustment in the Project's Subcontract Sum or in the Project Schedule arising out of or relating to such change.**

- 8.5. Deductive Change Orders: Contractor may issue a deductive change order to Subcontractor. This may include work not completed, delays to a Project caused by Subcontractor, scope of work transferred to another subcontractor or completed by Contractor, and deleted work as directed by the Architect or Owner. Contractor shall be entitled to charge a 15% fee to cover overhead and profit for any portion of the work that Subcontractor fails to complete under a Project Statement.
- 8.6. Contractor shall have the right to accelerate Subcontractor's time for performance on a Project by requiring that Subcontractor add additional manpower or work overtime within reasonable industry standards. In the event that Contractor accelerates Subcontractor's time for performance and Subcontractor is required to add manpower, Subcontractor shall be permitted a reasonable equitable adjustment to the Subcontract Sum for such Project. In the event that Contractor requests that Subcontractor perform overtime work on a Project, Subcontractor shall be entitled to an adjustment to the Subcontract Sum for such Project equal to the actual premium cost incurred as proven by Subcontractor's payroll records so long as such overtime is not required as a result of Subcontractor's failure to properly maintain the Project Schedule.
- 8.7. Construction Change Directive: Contractor may direct a change in the Work for a Project prior to reaching an agreement with Subcontractor on the adjustment, if any, in the Subcontract Sum or the Project Schedule, or both, resulting from such change. Such a Construction Change Directive from Contractor shall be in writing and signed by Contractor. A Construction Change Directive may be issued in absence of total agreement on the terms of a Change Order, and any adjustments to the Subcontract Sum or time extension for such Project.
- 8.7.1. If a Construction Change Directive provides for an adjustment of the Subcontract Sum, the adjustment shall be as provided in Subsections 8.1.1 – 8.1.4 above, and overhead and profit shall be limited as set forth in subsection 8.2.
- 8.7.2. Upon receipt of a Construction Change Directive, Subcontractor shall proceed promptly with the changed Work and advise Contractor of Subcontractor's agreement or disagreement with the price or time adjustments contained therein within ten (10) days of receipt.
- 8.7.3. If Subcontractor agrees with the price and/or time adjustments set forth in the Construction Change Directive, Subcontractor may countersign the written Construction Change Directive and it shall be recorded as a Change Order.
- 8.7.4. If Subcontractor disagrees with the price and/or time adjustments set forth in the Construction Change Directive, Subcontractor may assert a claim pursuant to Article 29, Dispute Resolution, below. Pending final resolution of any dispute, Contractor shall only pay Subcontractor for its direct costs of Time and Materials as expressly demonstrated by invoices and pay records.
- 8.8. IN ORDER TO EXPEDITE ALL CHANGES, SUBCONTRACTOR SHALL BE REQUIRED TO RESPOND TO ALL PRICE AND/OR TIME ADJUSTMENTS PROVIDED BY CONTRACTOR WITHIN ANY CONSTRUCTION CHANGE DIRECTIVE, BACK CHARGE, CHANGE ORDER OR OTHER CHANGE TO SUBCONTRACTOR'S WORK ON A PROJECT WITHIN TEN (10) DAYS OF RECEIPT AND/OR INPUT INTO ANY PROJECT MANAGEMENT SOFTWARE FOR THE APPLICABLE PROJECT. Subcontractor's response shall either: (a) acknowledge agreement with the adjustment, or (b) dispute, in whole or in part, the adjustment. If any part of the proposed adjustment is disputed, Subcontractor's response shall specifically outline the factual dispute, including but not limited to identifying specifically all issues with the proposed change, along with Subcontractor's estimate for the appropriate price and/or time adjustment for such change. **IF SUBCONTRACTOR FAILS TO PROVIDE A RESPONSE IN ACCORD WITH THIS PARAGRAPH WITHIN SUCH TEN (10) DAY PERIOD, SUBCONTRACTOR'S FAILURE TO RESPOND SHALL BE CONCLUSIVELY DEEMED AS AN ACCEPTANCE AND APPROVAL WITHOUT DISPUTE OF THE CHANGE.**

## 9. INSURANCE:

- 9.1. Prior to commencing work on any Project, Subcontractor shall provide a Certificate of Insurance to Contractor evidencing the below requirements, or the requirements set forth on the applicable Project Statement or Contract Documents, if different. A copy of a Certificate of Insurance form is attached as Exhibit "6" to each Project Statement. The term "Subcontractor" as used herein means and includes subcontractors of every

tier.

- 9.2. **Indemnification:** As a part of consideration of the parties to enter into this MSA and any subsequent Project Statement, the receipt and sufficiency of which is hereby acknowledged by Subcontractor, Subcontractor agrees to indemnify, defend and hold Contractor and Owner and their officers, directors, employees, agents, and all other parties as set forth in the Contract Documents for each Project for which Subcontractor enters into a Project Statement (the "Indemnified Parties") wholly harmless from any damages, claims, demands, suits by any person or persons, losses, and expenses (including but not limited to, reasonable attorneys' fees and court costs), arising out of or resulting from the execution of the work provided in such Project Statement, whether performed by Subcontractor, its agents, or employees. Subcontractor acknowledges that it has obtained and will maintain insurance coverage for the full extent of the contractual liability assumed by Subcontractor pursuant to this provision. Subcontractor acknowledges that it has obtained and will maintain insurance coverage with an AM Best rated "A-VIII" insurance company or better for the full extent of the contractual liability assumed by Subcontractor pursuant to this provision. Notwithstanding anything to the contrary, Subcontractor's insurance and/or the insurance requirements pursuant to this MSA and any Project Statement shall in no way limit Subcontractor's liability under this provision. Notwithstanding anything to the contrary, Subcontractor shall not be responsible to indemnify or hold harmless the Indemnified Parties for the Indemnified Parties' sole negligence.
- 9.3. **General Liability:** Subcontractor shall maintain at its own expense such insurance as will protect it from claims under Public Liability, Property Damage, and Completed Operations for at least a period of one (1) year from the Date of Substantial Completion of any Project for which it enters into a Project Statement, the final payment to Subcontractor, or for such longer period as may be required by the Contract Documents for such Project, whichever is latest in time. All Certificates of Insurance for each Project shall state the following:
- 9.3.1. \$1,000,000 Limit of Liability per occurrence and \$2,000,000 aggregate.
- 9.3.2. Contractor and Owner as Additional Insured as their interest may appear with no exclusions for completed operations.
- 9.3.3. Per Project Aggregate.
- 9.3.4. Policy contains a Waiver of Subrogation in favor of Contractor and Owner.
- 9.3.5. Explosion, Collapse and Underground (XCU) coverage where applicable.
- 9.3.6. Insurance is primary and is not dependent upon Contractor's insurance. Should Subcontractor fail or neglect to provide the required insurance and proof of all required insurance, Contractor shall have the right, but not the duty, to provide said insurance and deduct from any money that may be due or become due to Subcontractor any and all premiums paid by Contractor for and on account of such insurance.
- 9.4. **Automobile Liability:** Subcontractor shall maintain at its own expense Comprehensive Automobile Liability Insurance for all owned, hired or non-owned vehicles. All Certificates of Insurance for each Project shall state the following:
- 9.4.1 Combined Single Limit for Bodily Injury and Property Damage in the amount of \$1,000,000 per occurrence.
- 9.4.2 Contractor and Owner as Additional Insured as their interest may appear.
- 9.4.3 Policy contains a Waiver of Subrogation in favor of Contractor and Owner.
- 9.5. **Excess (Umbrella) Liability:** Subcontractor shall maintain at its own expense an Umbrella policy to apply in excess of the underlying limits for General Liability, Automobile Liability and Employers' Liability. Subcontractor's full policy limits shall apply to this Subcontract and be evidenced on the required certificate. Policy limits less than \$2,000,000 will not be accepted. All Certificates of Insurance for each Project shall state the following:
- 9.5.1 Contractor and Owner as Additional Insured as their interest may appear.
- 9.5.2 Policy contains a Waiver of Subrogation in favor of Contractor and Owner.
- 9.6. **Professional Liability:** Should Subcontractor's Work at any time explicitly or implicitly, whether or not that of a sub-subcontractor of any tier, include responsibility for elements of design, design-assist elements, coordination of systems, signing or stamping drawings, engagement of a design professional, engineering or building information modeling ("BIM") services, specifications related to or in any way requiring performance of a system or any portion of Subcontractor's work, or be listed by Contractor in the Owner Contract or Contract Documents as a trade for which Contractor has any design responsibility, Subcontractor shall have Professional Liability with limits not less than \$1,000,000 per claim. If required, coverage shall include liability arising out of the negligent errors or omissions of Subcontractor in the rendition of professional services. If coverage is on a "claims-made" basis, the retroactive date for coverage shall pre-date the commencement



of any professional services by Subcontractor related to the Work. Renewal policies shall maintain the same retroactive date. Coverage shall be maintained for not less than five (5) years after completion of the entire Project by Contractor, notwithstanding any earlier completion of the Work. Subcontractor shall not subcontract design services to a third party without prior written approval of Contractor, and subcontracting shall not relieve Subcontractor of the obligation to furnish its own professional liability insurance as required by this paragraph. If Contractor allows subcontracting of design services in its sole discretion, Subcontractor shall require the applicable sub-subcontractor to also furnish professional liability insurance in compliance with this paragraph. Contractor shall be, and Subcontractor shall require that each agreement with a sub-subcontractor performing design services shall provide that Contractor is, an express and intended third-party beneficiary entitled to enforce all rights and remedies of Subcontractor against the sub-subcontractor under the agreement.

9.7. Pollution Liability: Subcontractor shall maintain at its own expense such insurance as will protect it from claims under Pollution Liability if required as stated herein. Such coverage shall only be required for Projects on which Subcontractor's Work or a sub-subcontractor of any tier includes responsibility for any of the following scope(s) of Work:

- (1) Remediation, abatement, removal, handling or transportation of transportation or disposal of hazardous materials, as this term is defined or regulated by applicable law; site/dirt work (including, without limitation, excavation, paving, landscaping, and digging); drilling or any subsurface work; moisture protection (roofing, sealants, and siding); mechanical, electrical, and plumbing; environmental services/work; demolition; or any building envelope work (including, without limitation, vapor / moisture barriers, roofing, flashing or other waterproofing systems, exterior window systems, curtain wall components or systems, plaster, stucco, exterior stone / masonry or exterior insulation finishing systems (EIFS));
- (2) Drywall or insulation; doors and windows (including, without limitation doors, frames, hardware, glass, and glazing); or concrete; or
- (3) Wood and plastic (including, without limitation, carpentry, millwork, and vanity tops); structural steel; masonry (other than building envelope work); flooring; painting; electrical; specialties (including, without limitation, markerboards, toilets/accessories, and lockers); furnishings; equipment (including, without limitation, kitchen, theater, library, and athletic); or conveying systems.

If so required, coverage shall at a minimum be \$1,000,000 per claim and annual aggregate; shall name Contractor and Owner as Additional Insureds as their interest may appear; shall contain a Waiver of Subrogation in favor of Contractor and Owner; shall include coverage for losses caused by pollution incidents (including mold) that arise from the Work or operations of Subcontractor; and shall include coverage for bodily injury, property damage (including loss of use of damaged property or of property that has not been physically injured), cleanup costs and defense (including costs and expenses incurred in the investigation, defense or settlement of claims). The policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from: (a) asbestos or lead; (b) mold, fungus or bacteria; (c) contractual assumption of liability; (d) impaired property that has not been physically injured; (e) property damage to the Work performed by Subcontractor; (f) work performed by sub-subcontractors, vendors or independent contractors; or (g) punitive, exemplary or multiplied damages. If coverage is on a "claims-made" basis, the retroactive date for coverage shall pre-date the commencement of the Work, and continuous coverage shall be maintained or an extended reporting period will be exercised for a period of not less than five (5) years after completion of each Project on which Subcontractor is performing any of the scopes of Work listed in subsection (1) above; and for a period of not less than two (2) years after completion of each Project on which Subcontractor is performing any of the scopes of Work listed in subsection (2) above.

9.8. Worker's Compensation and Employers' Liability: Subcontractor shall maintain at its own expense such insurance as will protect it from claims under the Worker's Compensation Law of the state in which the work for each Project is being performed. Should Subcontractor fail or neglect to provide the required insurance, Contractor shall have the right, but not the duty, to provide said insurance and deduct from any money that may be due or become due to Subcontractor any and all premiums paid by said Contractor for and on account of such insurance. The policy shall contain a Waiver of Subrogation in favor of Contractor and Owner.

9.9. Builder's Risk: If required by the Contract Documents for a Project, Builders' Risk insurance shall be provided by Owner or Contractor, which shall include Subcontractor as an additional insured, covering all materials, equipment, machinery and supplies of the insured for such Project, or for which the insured shall be liable or shall have assumed liability that becomes a permanent part of such structure or Project. It shall be Subcontractor's duty to ascertain the scope of any applicable coverage, and Contractor has no obligation or duty to advise Subcontractor of the same. It is the responsibility of Subcontractor to furnish its own coverage for shanties, scaffolding, staging towers, supplies, tools and any other owned/rented equipment not to become part of the structure of such Project, or any other property not covered or for which it feels coverage

is not sufficient. Whether or not a loss is reimbursable by builder's risk insurance, Subcontractor hereby acknowledges its obligation for any loss to its work and will be responsible for the work and/or deductible amount under this policy. **A copy of the Project Certificate issued for the Builder's Risk Master Policy or ACORD Certificates of Insurance (or equivalent) shall be provided to Subcontractor upon written request.** Subcontractor assumes the responsibility to purchase any additional or gap builder's risk insurance it may deem necessary to protect its interest. If Subcontractor fails to cover any applicable deductible, Contractor may deduct such amounts from any amounts remaining owed to Subcontractor. If no amounts are remaining owed to Subcontractor, Subcontractor shall be required to pay such deductible within ten (10) days of any notice. Furthermore, the provision of Builder's Risk insurance shall in no way modify or alter Subcontractor's indemnification obligations set forth in Section 9.2.

- 9.10. Cancellation, Renewal or Modification: All insurance certificates and policies of Subcontractor shall contain a provision that the coverage afforded thereunder shall not be canceled or non-renewed, nor restrictive modifications added, until at least thirty (30) days prior written notice has been given to Contractor, unless otherwise specifically required in the Contract Documents for the respective Project.
- 9.11. Carriers and Policy Form: All insurance coverages required of Subcontractor hereunder shall be underwritten in form and by an insurer acceptable to Contractor. In any event, all insurance required by this Subcontract shall be maintained diligently and shall only be with an insurer that carries an AM Best rating of A-VIII or better. All policies shall be written in "occurrence" based coverage and no "claims made" coverage shall be permitted. The failure to have such insurance coverage is a default under this MSA.
- 9.12. Protection and Risk of Loss: Subcontractor shall secure and protect the Work and all materials delivered to the Project and/or provided in accord with this MSA. Subcontractor shall assume full responsibility for the condition all such Work and materials until final acceptance by Architect, Owner and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the Work and the workmen of Contractor, Owner and other subcontractors from its operations. Contractor shall not be liable to Subcontractor for any loss or damage to Subcontractor's Work, materials, tools, equipment or supplies, however caused. Subcontractor assumes all risk of loss for Subcontractor's Work and materials, regardless of whether Subcontractor has been paid for such Work or materials. Unless otherwise specifically provided in this MSA or a subsequent Project Statement, Contractor is not responsible for providing any protection for Subcontractor's Work or materials, or protective service for Subcontractor's benefit.

## 10. TAXES:

- 10.1. Subcontractor will pay all social security and other taxes imposed upon it as an employer in connection with the performance of this MSA and any subsequent Project Statement, and shall furnish evidence, when required by Contractor, showing that all such payments required to be made have been paid. Subcontractor shall pay all applicable health and welfare charges, and union fees in connection with its work on any Project. Subcontractor shall be responsible for legislated increases in such taxes, which may take effect during the life of this MSA.
- 10.2. Subcontractor shall pay all applicable local, state and federal taxes, including but not limited to any sales and use taxes in connection with its work and any materials related to its work on any Project. Subcontractor shall be responsible for legislated increases in such taxes, which may take effect during the life of this MSA.
- 10.3. Subcontractor shall register with the State of Georgia and obtain Sales and Use Tax Certificate of Registration, and shall provide a copy of the current Sales and Use Tax Certificate of Registration and registration number to Contractor no later than the submission of Subcontractor's first application for payment on any Project. In the event that Subcontractor performs work in accordance with this MSA in a State other than State of Georgia, Subcontractor shall register with the applicable State and provide reasonable proof of the same to the Contractor.
- 10.4. **CONTRACTOR SHALL HAVE THE ABSOLUTE RIGHT TO WITHHOLD PAYMENT, INCLUDING BUT NOT LIMITED TO ALL RETAINAGE FOR A PROJECT, UNTIL SUCH TIME AS SUBCONTRACTOR PROVIDES EVIDENCE OF ITS COMPLIANCE WITH SECTION 10.3, AND/OR PROVIDES OTHER EVIDENCE ACCEPTABLE TO CONTRACTOR, AT ITS SOLE DISCRETION, THAT ALL SALES AND USE TAXES LIABILITIES HAVE BEEN SATISFIED.**
- 10.5. Subcontractor shall strictly comply with any all local, state and federal codes, regulations and laws related to the collection of taxes, including but not limited, to the extent applicable, to those contained within O.C.G.A. § 48-8-1 *et seq.* Additionally, Subcontractor expressly recognizes and acknowledges the rights and

obligations for contractors and subcontractors set forth in O.C.G.A. § 48-8-63.

- 10.6. Subcontractor shall indemnify and hold Contractor completely harmless for any taxes, fines, levies, fees, or other costs imposed upon Contractor arising out of or related to any failure to abide by the provisions of this Article 10. Notwithstanding anything to the contrary, this provision shall survive final completion of any Project and any termination of this MSA and any Project Statement.
- 10.7. Contractor shall also have the right to withhold, as an extraordinary reserve and/or to use as set off, and without limiting other rights and remedies, an amount reasonably sufficient, as solely determined by Contractor, to remedy any issues, fines, taxes, levies, audit and legal costs, attorney's fees or other costs arising out of any failure by Subcontractor to abide by the provisions of this Article 10. Contractor shall be entitled to withhold the aforementioned amounts whether such issues, fines, taxes, levies, audit and legal costs, attorney's fees or other costs arise out of this MSA or under any other subcontract, purchase contract, purchase order or other agreement between Contractor and Subcontractor on this or any other project.

## 11. LIENS:

- 11.1. To the extent Subcontractor is paid, Subcontractor shall make all payments to its sub-subcontractors, laborers and materialmen in prompt fashion and shall save and keep every Project and the site upon which such Projects are situated free from all mechanic's liens and all other liens by reason of its work or any materials or other items used by or provided to Subcontractor. In the event that a lien is filed against a Project or site, within three (3) days of notice of the lien Subcontractor shall remove the lien. Subcontractor shall provide, within said three (3) day period, proof that the lien(s) has been cancelled, satisfied or bonded off. If Subcontractor fails to remove such lien(s) by bonding or otherwise or if Subcontractor files a lien against a Project or the site upon which it is situated prior to the time when the amount claimed is payable to Subcontractor by Contractor under the terms of this MSA or the respective Project Statement, Contractor may retain sufficient funds, out of any money due or thereafter to become due by Contractor to Subcontractor, to pay the same and to pay all costs incurred by reason thereof, including reasonable attorneys' fees and the cost of any lien bonds that Contractor may elect to obtain to discharge said lien. Contractor may also discharge any such liens from any funds which are or which become due to Subcontractor and which are at any time in possession of Contractor. In the event that Subcontractor has knowledge of a lien being placed upon a Project, Subcontractor shall give Contractor advance notice. All costs to Contractor associated with the removal of liens shall be a charge against Subcontractor, including all attorneys' fees, bonding premiums and court fees.
- 11.2. Subcontractor acknowledges that as a condition to payment that it shall execute interim and final waivers of lien and bond claims in the form required by the Contractor (See, e.g. Exhibits to each respective Project Statement) and any additional documents required by the Contract Documents, and that the failure of Subcontractor to make payment to its sub-subcontractors and suppliers, as represented in said waiver documents, shall be a material default and breach of this MSA.

## 12. SAFETY:

- 12.1. Project Safety: Subcontractor shall design and submit to Contractor, upon Contractor's request, a specific safety program for the Work to be performed under each Project Statement. Subcontractor shall maintain its safety program, which shall in all cases meet or exceed all applicable federal, state, and/or local safety related laws and regulations along with Contractor's safety program as in effect during the course of the Project. Subcontractor shall submit this program for review within ten (10) days of the execution of each Project Statement or ten (10) days before mobilizing on each such Project, whichever occurs first. Contractor may issue directives to Subcontractor with respect to a safety compliance issue and may require Subcontractor to respond promptly to each directive. Subcontractor's failure to correct any issue in a prompt manner authorizes Contractor, at its discretion, to take whatever steps it deems to be necessary to address said issue in order to provide a safe work site for all concerned parties. Any costs incurred by Contractor because of any such issue shall be the responsibility of Subcontractor. Notwithstanding any safety measures established by Subcontractor, it shall without limitation comply with Contractor's Standard Accident Prevention Program for Subcontractors, attached hereto as Exhibit "C", Contractor's Project Safety Manual, as in effect from time to time, job site rules and standards established from time to time by Contractor, and any additional requirements for a Project set forth from time to time by Owner or its representatives (e.g. OCIP), all safety obligations imposed by each Project's Contract Documents, the Underground Gas Pipe Law, The High Voltage Act, The Occupational Safety and Health Act of 1970 and The Construction Safety Act of 1969 and the regulations issued pursuant to these Acts. This also includes any state or local jurisdictions that have published requirements specific to safety.

- 12.2. Subcontractor agrees to attend Contractor's Tool Box Meetings or, if permitted by Contractor, to hold its own Tool Box Meeting weekly. Subcontractor agrees to promptly submit a copy of the minutes from such meetings to Contractor. All information from the Tool Box Meetings must be reiterated to the crews on site.
- 12.3. Subcontractor will provide a safety supervisor who speaks English that will be on site and supervise all crews for Subcontractor (and its sub-subcontractors) to ensure compliance with this Article and all other applicable safety regulations (the "Competent Person"). Documentation of training/experience shall be filled out and filed in the jobsite office for each Project. Work cannot commence unless the Competent Person is on site.
- 12.4. Hazard Communication: Subcontractor shall be responsible for implementing and maintaining a Hazard Communication Program for each Project as required by all applicable laws. This includes, but is not limited to, providing Safety Data Sheets (SDS's) to Contractor on any chemicals or materials brought to any Project site. Subcontractor shall submit this program for review within ten (10) days of execution of each Project Statement or ten (10) days before mobilizing on each such Project, whichever occurs first. Subcontractor is responsible for any chemicals that will be used by Subcontractor that enter the Project site.
- 12.5. Substance Abuse Program: Subcontractor agrees to be responsible for implementing and maintaining an effective Substance Abuse Program. Subcontractor shall submit this program for review upon request of Contractor. Further Subcontractor agrees to abide by any Substance Abuse Program imposed by Contractor or Owner. Any costs incurred in the adoption, implementation or administration of any such Substance Abuse Program shall be the responsibility of Subcontractor.
- 12.6. Notice of Accidents: Subcontractor shall immediately notify Contractor of any accident and/or injury to Subcontractor's employees occurring at any Project site or arising out of performance of Subcontractor's Work under any Project Statement. Subcontractor shall supply a written, detailed report of all accidents and injuries.
- 12.7. Suspension of Work, Administrative Charges: Contractor, at its election, may suspend Subcontractor's Work on any Project if Subcontractor fails to comply with any safety rules, regulations, laws, plans and provisions and continue any suspension until Subcontractor remedies any violation. No suspension due to safety violation shall result in an increase in Subcontractor's time for execution of work or payment for work for any such Project. Additionally, Contractor shall be entitled to assess an Administrative Charge for violations as outlined in Article 14 below and may additionally assess any delay damages or other costs to Contractor associated with any safety violation of Subcontractor and assess costs and damages per this MSA.
- 12.8. Absolutely no radios or music-playing devices of any kind are allowed in or around the buildings. Music from a vehicle or equipment will not be played loud enough to be heard outside its cab and the use of personal headphones for music is not permitted.

### **13. PERMITS & LICENSES:**

- 13.1. Subcontractor shall procure, secure, obtain or otherwise acquire the necessary licenses, government authorizations and permits for every Project for which it enters into a Project Statement. Subcontractor shall pay all associated fees necessary to perform Subcontractor's scope of work for each such Project. It is Subcontractor's duty and responsibility to submit all documents necessary to obtain such licenses, government authorizations, and permits in a timely fashion to meet the Project Schedule for each such Project. The failure to obtain such licenses, government authorizations and/or permits shall not be grounds for extension of time or justifiable excuse for a delay in such Project Schedule, and shall constitute a material breach of this MSA.

### **14. ADMINISTRATIVE CHARGES:**

- 14.1. Subcontractor shall pay all charges, fines or penalties imposed against Subcontractor, Owner or Contractor by any governmental agency having jurisdiction over the work under any Project Statement attributable to any act or omission of Subcontractor, and shall pay all Administrative Charges imposed by Contractor pursuant to this MSA.
- 14.2. In the event that Subcontractor fails to abide by the terms of this MSA, any subsequent Project Statement, and/or any job site rule pertaining to a Project, in addition to any other remedies or rights provided hereunder or otherwise available, Subcontractor shall be liable to Contractor for an Administrative Charge. Violations subject to Administrative Charges include, but are not limited to, the failure to do the following:

- 14.2.1. Attend weekly foreman's meetings.
  - 14.2.2. Comply with cleanup provisions.
  - 14.2.3. Comply with safety provisions.
  - 14.2.4. Comply with site logistics.
- 14.3. Amount and Consequence of Administrative Charges: For a first instance violation, Contractor shall provide Subcontractor a verbal warning, which may be confirmed in writing by Contractor.
- 14.3.1. For a second instance violation, the Administrative Charge shall be \$100.
  - 14.3.2. For a third instance violation, the Administrative Charge shall be \$500.
  - 14.3.3. For a fourth instance violation, the Administrative Charge shall be \$1,000, and Subcontractor shall be deemed in immediate, non-curable default, unless otherwise waived in writing by Contractor, and the applicable Project Statement (and at Contractor's sole discretion, this MSA) shall then terminate per terms of the Article regarding termination (Article 20).
  - 14.3.4. Subcontractor agrees that its failure to perform the above increases Contractor's cost to administer Projects in an amount which is extremely difficult to determine and that the Administrative Charges set forth above are a reasonable estimate of those costs.

**15. CLEANUP:**

- 15.1. Subcontractor shall maintain a clean and safe work area at each Project by removing on a daily basis all trash and debris either resulting from Subcontractor's work or caused by its employees. All trash such as cartons, boxes, pallets, etc. shall be broken down to their least dimension and placed in Subcontractor's dumpster, an approved on-site dumpster or other such on-site location as designated by Contractor. Subcontractor will be responsible for removing such trash and debris from the work area with its own trash buggies or carts. It shall be Subcontractor's responsibility to provide a sufficient number of trash buggies and any other cleaning equipment such as brooms or vacuum cleaners. Subcontractor will leave the building and premises of each Project clean insofar as the work performed under each Project Statement is concerned. If Contractor utilizes a composite crew on any Project, Subcontractor agrees to provide personnel and to participate in a composite cleanup crew supervised by Contractor, as required; provided that Subcontractor shall retain supervision, including that related to the safety and adherence to applicable law, of the acts of Subcontractor's participants in such composite cleanup crew. If, after one (1) day's written notice sent via email, delivery of subcontractor meeting minutes or otherwise by Contractor's representative to Subcontractor's representative at the site of the work, Subcontractor has not diligently proceeded with the cleanup as outlined in this Section, then Contractor has the right to proceed with the cleanup work at Subcontractor's cost and expense and/or assess a fine per Article 14.

**16. SUBMITTALS:**

- 16.1. Subcontractor must inform Contractor, in writing and in advance of installation, of any deviations in the shop drawings and samples from the requirements of the Owner Contract and the Contract Documents thereof. Subcontractor agrees to submit shop drawings, data, catalog cuts, samples, and other submittals in strict accordance with the Contract Documents on a timely basis or as required by Contractor to meet the overall Project Schedule for each Project or as otherwise requested by the Contractor.
- 16.2. Substitutions: Subcontractor, if allowed by the Contract Documents for such Project, must submit substitutions for consideration within fifteen (15) days of award of the Project Statement, unless otherwise specified by the Contract Documents.
- 16.3. Responsibility: The approval of shop drawings, data, catalog cuts, samples and other submittals shall not relieve Subcontractor of its responsibility for proper detailing of the design, or for errors or omissions in the final installed work or for failure to comply with the Contract Documents for each Project. Subcontractor is to review and approve shop drawings, samples, etc. supplied by its sub-subcontractors or suppliers prior to submission to Contractor.

**17. LAYOUT:**

- 17.1. Subcontractor shall be responsible for all layout and field dimensions required for the performance of the work under each Project Statement. Any cutting or patching of work of Subcontractor or others caused by Subcontractor's error in layout or installation of its work shall be the responsibility of Subcontractor, and Subcontractor shall bear all of the costs thereof. Reference lines and benchmarks will be established by

Contractor and will be adhered to by Subcontractor.

**18. BONDS:**

- 18.1. If a Project Statement or any applicable law requires a bond from Subcontractor, Subcontractor shall provide, prior to the commencement of any Work hereunder, Payment and Performance Bonds in the form attached hereto as Exhibit "G" or in such other form as attached to such Project Statement or as otherwise approved by Contractor, in the amount of the Subcontract Sum for such Project. The premium for Payment and Performance Bonds shall be included in the original Subcontract Sum set forth on each such Project Statement. Subcontractor is responsible for purchasing Payment and Performance Bonds for the total Subcontract Sum and maintaining the Bonds throughout the entire duration of each such Project. Subcontractor's failure to provide proof of effective Payment and Performance Bonds within ten (10) days of award of a Project Statement for any Project requiring such bonds shall be cause to terminate such Project Statement and/or withhold Subcontractor's progress payments under such Project Statement. The failure of Contractor to insist upon proof of procurement of such Payment and Performance Bonds shall not act as a waiver. A copy of the paid invoice must be submitted to Contractor.
- 18.2. Said Payment and Performance Bonds shall be provided by an AA rated (Standard and Poor) surety acceptable to Contractor and be maintained in full force and effect for the faithful and complete performance of its work under each such Project Statement, including any and all warranty obligations set forth herein or under such Project Statement.
- 18.3. Any changes or aggregate of changes to the scope of work that increases the Subcontract Sum for such Project by ten percent (10%) or more shall require Subcontractor to obtain a Consent of Surety indicating the additional coverage. All costs associated with this increased coverage should be included and itemized in Subcontractor's proposed change order request as a separate line item. Failure by Subcontractor to include additional bond premium costs in negotiated change orders shall not relieve Subcontractor of its responsibility to provide increased coverage at Subcontractor's expense. Further, Subcontractor's failure to obtain the Surety's consent for any changes or modifications to the Subcontract Sum shall not relieve the Surety from its duties and obligations under any applicable Payment or Performance Bonds.
- 18.4. If the Project Statement and applicable law do not require a bond from Subcontractor for a Project, it is understood, at Contractor's discretion, that such Project Statement may become part of Contractor's Subcontractor Default program. Subcontractor, at the request of Contractor, shall provide from time to time financial information in a format acceptable to Contractor in order to determine financial stability and acceptability into Subcontractor Default Program.

**19. HOISTING:**

- 19.1. Subcontractor shall be responsible for unloading, hoisting, and stocking all of its materials, supplies, tools and equipment on any Project. Subcontractor may utilize Contractor's hoisting facilities during regular working hours provided that adequate facilities are available and Subcontractor has scheduled the use of the facilities with Contractor. Any hoisting outside the capabilities of the on-site hoisting equipment will be the responsibility of Subcontractor. If Contractor's hoisting facilities are unavailable for any reason, Subcontractor shall provide, at its expense, hoisting facilities sufficient to meet Subcontractor's requirements.

**20. TERMINATION:**

- 20.1. Owner Termination: In the event that Owner terminates or cancels an Owner Contract for any cause whatsoever at any time after the date hereof, within sixty (60) days after such termination or cancellation, Contractor may, by written notice to Subcontractor, cancel and terminate the Project Statement related to such Owner Contract, and, in that event, it is agreed that Subcontractor shall have no claim of any kind whatsoever against Contractor for breach of this MSA or such Project Statement or for any other cause or reason whatsoever and that Contractor shall be under no liability to Subcontractor except that Contractor shall be liable to Subcontractor for those amounts theretofore or thereafter paid to Contractor by Owner on account of the work performed by Subcontractor under such Project Statement.
- 20.2. Owner Insolvency: In the event that Owner or such other party responsible to Contractor for payment in relation to an Owner Contract shall (1) file for bankruptcy protection, (2) have an action brought by it or against it under any law dealing with insolvency or bankruptcy, (3) have a receiver appointed over its assets or undertakings, (4) enters into a deed or arrangement, or makes an assignment for the benefit of creditors, or (5) fails to function as a going concern, Contractor may at its sole option terminate the Project Statement

related to such Owner Contract, by written notice to Subcontractor, and in that event, it is agreed that Subcontractor shall have no claim whatsoever against Contractor except that Contractor shall be liable to Subcontractor for those amounts theretofore or thereafter actually received by Contractor on account of work performed by Subcontractor under such Project Statement which amounts are not subject to any claims for preferential payment, set offs and/or any other claim wherein Contractor may be subject to loss of payments received from Owner. In the event that Contractor is ever required to return or relinquish any payment or relinquish control over funds received on account of work performed by Subcontractor under such Project Statement, and upon which Subcontractor received payment from Contractor, Subcontractor agrees to indemnify Contractor for all amounts returned or relinquished.

- 20.3. Contractor Voluntary Termination: Contractor may terminate, in its sole discretion, this MSA or any related Project Statement by written notice for the convenience of Contractor, and Subcontractor shall be required to cease work on the Project or Projects affected by such termination. In the event of Contractor's termination for convenience, Subcontractor, subject to the terms and conditions hereof, including Section 3.1, shall be paid for its work in place and costs directly related to the termination, as determined by Contractor, except that Subcontractor shall not be entitled to anticipated profits on work not yet performed or on materials or equipment not yet furnished or for consequential damages of any sort.
- 20.4. Strike or Other Labor Related Termination In the event of a strike, disruption, delay or stoppage of the work ("Work Stoppage"), whether on a Project or any other building, structure or improvement which Contractor, or any of its subsidiaries, affiliates, or joint ventures is erecting or altering, which results from a dispute involving or affecting or which is caused, in whole or in part, by the labor employed by Subcontractor, Contractor may at its option terminate this MSA or any related Project Statement. If this MSA or any related Project Statements are terminated pursuant to this Section, Contractor shall, subject to the conditions for payment set forth in this MSA, including Section 3.1 and provided that the action or inaction of Subcontractor did not cause, bring about, contribute to, or result in such Work Stoppage, compensate Subcontractor for the value of labor and material theretofore furnished or delivered to the site of such Project(s), proportioned upon the Subcontract Sum for such Project(s), except that Subcontractor shall not be entitled to anticipated profits on work not yet performed or on materials or equipment not yet furnished or for consequential damages of any sort.
- 20.5. Termination For Cause: Contractor may terminate the Project Statement and this MSA if Subcontractor, with respect to any Project:
- 20.5.1. Refuses or fails to supply enough properly skilled workers or proper materials or fails to timely perform its Work;
  - 20.5.2. Fails to make payment to its sub-subcontractors or suppliers for materials or labor in accordance with the respective agreements between Subcontractor and its sub-subcontractors and suppliers, including failure to sign a joint check or agree to direct payment;
  - 20.5.3. Disregards laws, ordinances, or rules, regulations or orders of a governmental entity or public authority having jurisdiction or any Project safety rules;
  - 20.5.4. Otherwise is in material breach of a provision of the Contract Documents or Project Statement for such Project;
  - 20.5.5. Fails to work harmoniously with Contractor's Project Manager or any other parties on site of such Project.
  - 20.5.6. Files a voluntary petition or is subject to an involuntary petition in bankruptcy or if an action for receivership has been taken against Subcontractor or if Subcontractor has otherwise had a receiver appointed. In the event of bankruptcy, receivership or other insolvency of Subcontractor (each a "Bankruptcy Event"), Subcontractor acknowledges that Contractor, at its sole discretion, may undertake remedies of procuring replacement subcontractors or suppliers to fulfill the obligations of Subcontractor.
  - 20.5.7. In the event of a Bankruptcy Event, Contractor may, in its sole discretion, make demand upon Subcontractor that it provide Contractor with reasonable assurance of Subcontractor's ability to fully and completely fulfill all obligations and requirements of this MSA and any relevant Project Statements. Further, Contractor shall be entitled to make demand upon Subcontractor that it either assume or reject the MSA and any relevant Project Statements, and Subcontractor shall respond in writing to such demand within two (2) business days of its receipt of such demand. Should Subcontractor fail to respond to a demand for further assurances or fail to timely assume the MSA and any relevant Project Statements after receipt of demand, Subcontractor shall

be deemed in material breach of this MSA and Contractor shall be entitled to all contractual rights and remedies as well as all remedies available at law or in equity.

- 20.6. Mechanism for Termination for Cause: When any of the above reasons exist, Contractor may, without prejudice to its other rights or remedies and after giving Subcontractor two (2) calendar days' written notice, terminate the employment of Subcontractor and may, on any Project for which Subcontractor is providing work in connection with a Project Statement,
- 20.6.1. Take possession of Subcontractor's materials, equipment, tools and machinery incorporated into or to be incorporated into the Work or otherwise used to complete the Work;
- 20.6.2. Accept assignment of Subcontractor's sub-subcontracts or supplier agreements; and/or
- 20.6.3. Finish the Work by whatever reasonable method Contractor may deem expedient.
- 20.7. When Contractor terminates a Project Statement and/or this MSA for cause, Subcontractor shall not be entitled to receive further payment until the Work is finished on all Projects for which Subcontractor is providing work in connection with a Project Statement.
- 20.8. If Contractor terminates or purports to terminate a Project Statement and/or this MSA for cause as described in Sections 20.5 and 20.6 or otherwise, and it is later determined that appropriate grounds did not exist for such for cause termination, such termination shall be treated as a termination for convenience under the terms of Section 20.3.
- 20.9. If the unpaid balance of the Subcontract Sum for all Projects for which Subcontractor is providing work in connection with a Project Statement exceeds costs of finishing the Work for such Projects, including compensation for the use of any professionals, such as engineers and/or architects, made necessary thereby, and other damages incurred by Owner and/or Contractor and not expressly waived, such excess shall be paid to Subcontractor. However, if such costs and damages exceed the unpaid balance, Subcontractor shall be liable to and shall pay Contractor the difference. The obligation of Subcontractor to pay Contractor shall survive termination of a Project Statement and/or this MSA.
- 20.10. Any default by Contractor shall be deemed waived unless Subcontractor shall have given Contractor written notice thereof within seven (7) days after the occurrence of such default.
- 20.11. Termination of a Project Statement or this MSA, for any reason, including cause, shall not release Subcontractor from obligations which normally follow completion or cessation of work on a Project, including any warranty obligations, insurance obligations, obligations arising under Article 5 of this MSA, provision of lien and bond releases and waivers, and the provision of any and all remaining close out documentation.

## **21. SUPERVISION AND LABOR:**

- 21.1. Subcontractor shall appoint one of its employees to be stationed on the site of each Project during the performance of the work on such Project to supervise the performance of the work. This employee will be subject to Contractor's approval. Contractor has the right of removal of said employee from the Project if proven unsatisfactory, with said employee vacating the Project immediately upon written or oral notice. This employee shall have the authority to make decisions on behalf of Subcontractor. This employee cannot be reassigned from the Project by Subcontractor without Contractor's approval, and shall remain on-site a minimum of thirty-five (35) hours per week and one hundred percent (100%) of the time this Subcontractor is directly performing the work described in the Project Statement and Contract Documents for such Project. All communications between Subcontractor and Contractor's project superintendent shall be forwarded through this employee.
- 21.2. Subcontractor agrees that in the performance of the Work called for by each Project Statement or otherwise, it will employ only such labor as will not delay or interfere with the expeditious progress of the Project, and as will be acceptable to and will work in harmony with all other workmen employed on-site of the Project or on any other building, structure, or other improvement whether public or private which Contractor may then be erecting or altering.
- 21.3. Subcontractor shall maintain and assign to the Work, at all times, sufficient staff and personnel to perform the Work in a skilled, professional and satisfactory manner and so as not to delay the progress of the Work and in compliance with the Contract Documents and all applicable laws. Subcontractor shall immediately



replace or cause to be replaced all employees or workmen whose work, as determined by Contractor, does not meet such requirements.

**22. THIRD PARTY CLAIMS:**

- 22.1. Subcontractor hereby assigns to Contractor any and all claims against third parties for damages caused by third parties incurred in Subcontractor's performance of this MSA. The intent of the parties herein is that Contractor shall have all rights as a third-party beneficiary to seek remedy and relief necessitated due to the actions or omissions of Subcontractor's sub-subcontractors and/or suppliers.

**23. WARRANTY:**

- 23.1. Subcontractor warrants to Contractor that all work, materials and equipment furnished, or which are furnished by Subcontractor's sub-subcontractors or materialmen, under this MSA and each subsequent Project Statement shall be new and free from defects, unless otherwise specified, and that all work will be first-class quality and shall be in conformance with each such Project Statement and the Contract Documents for such Project. Subcontractor further warrants that all work for each such Project will comply with all warranties, guaranties and building requirements which are imposed upon Owner, Contractor, or Subcontractor by any local ordinances, requirements of city or county building codes or of federal or state authorities which are applicable to the work, local sanitary laws or rules or regulations, or any orders or interpretations thereof by governing public authorities.

- 23.2. Without limiting its other obligations under a Project's Contract Documents or common law, within three (3) days of notice or fewer days as necessary or reasonably requested by Contractor, Subcontractor agrees to remedy at its own expense any defects on a Project due to faulty materials or workmanship and shall pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the Date of Substantial Completion of such Project or within such longer time as may be prescribed by law or by the terms of any special warranties or guarantees required by the Contract Documents for such Project. Unless extended by the Contract Documents, for the purpose of establishing the Warranty period, the date of Substantial Completion for each Project shall be deemed to occur when Certificates of Substantial Completion have been issued for the entire Project. Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligation that Subcontractor has under this MSA or any related Project Statement, under law or under equity. The establishment of the time period of one (1) year after the date of Substantial Completion of each Project or for such longer period of time as may be prescribed by law or by the terms of any warranty or guaranty required by this MSA, the relevant Project Statement, or the Project's Contract Documents relates only to the specific obligation of Subcontractor to correct the work for such Project, and has no relationship to the time within which its obligation to comply with this MSA, the relevant Project Statement, or applicable provisions of law which may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Subcontractor's liability with respect to its obligations other than specifically to correct the work.

- 23.3. Whenever written guaranties or warranties are called for by the Contract Documents for a Project, Subcontractor shall furnish these for such period of time as may be stipulated. Further, Subcontractor shall conduct all work so as to not void or alter available warranty. Should the Contract Documents require Subcontractor to violate the foregoing sentence, Subcontractor shall provide Contractor notice of such and aid Contractor in submission of the same to Owner.

- 23.4. This Article 23 shall survive any termination of this MSA.

- 23.5. Notwithstanding anything to the contrary, any and all warranties, express or implied, provided in accordance with this MSA, a related Project Statement, or other Contract Documents for a Project shall inure to the benefit of and be enforceable by Contractor and Owner and their respective successors, transferees and assigns or by any person to whom Owner's or Contractor's interest may be assigned. Contractor and Owner may assign their warranty rights hereunder without Subcontractor's or any party underneath Subcontractor's consent.

**24. NO WAIVER:**

- 24.1. No failure of Contractor to exercise any power or right given hereunder or to insist upon strict compliance by Subcontractor with any of its obligation hereunder, and no conduct or practice of the parties at variance with the terms of this MSA, shall constitute a waiver or variation of Contractor's right to demand exact compliance with the terms hereof.

**25. EQUAL OPPORTUNITY CLAUSE:**

- 25.1. Subcontractor agrees to comply fully, unless exempted, with the provisions of Executive Order 11246 (as amended) of the President of the United States on Equal Employment Opportunities and the rules and regulations issued pursuant thereto. Subcontractor agrees to indemnify Contractor and hold Contractor harmless from any and all penalties, fines, charges, assessments, claims, demands, actions or causes of action by the United States Government or by any other entity or person, and agrees to pay any expenses, including attorney's fees, incurred by Contractor as a result of such failure.

**26. IMMIGRATION AND CONTROL ACT:**

- 26.1. Subcontractor represents and warrants that it is and agrees that it will remain in full compliance with the Immigration Reform and Control Act of 1986, and as amended, including but not limited to all required employment and identity verification procedures and record keeping requirements, and, as applicable, the Immigration and Nationality Act, as amended, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, the Georgia Security and Immigration Compliance Act, as amended, any other laws of the State where the Project is located related to citizenship, and all other immigration laws and regulations (collectively and together with the Immigration Reform and Control Act of 1986, "Immigration Laws"). In the event Subcontractor fails to comply in any respect with the requirements of any Immigration Laws, Subcontractor agrees to indemnify Contractor and any affected Owner with respect to and hold Contractor and such affected Owner harmless from any and all penalties, fines, charges, assessments, claims, demands, losses, damages, actions or causes of action by the United States Government, any state, local, or municipal government or by any other entity or person, and agrees to pay any expenses, including attorney's fees, incurred by Contractor as a result of such failure. Further, Subcontractor agrees to indemnify Contractor and Owner for any direct or indirect losses, damages, injuries, or costs arising out of or related to Subcontractor's breach of this Article 26 and Subcontractor agrees to hold Contractor and Owner harmless for any damages, injuries, claims, or other adverse actions or consequences arising from its actions to comply with this Article 26.
- 26.2. Subcontractor hereby agrees that, if it has not already, (1) it will begin to use U.S. Citizenship and Immigration Services E-Verify program ("E-Verify") within three (3) days of the date hereof; (2) in accordance with the Federal Acquisition E-Verify Clause, 48 C.F.R. 52.222-54 (as may be amended) and to the fullest extent required by law, it will use E-Verify to verify the employment eligibility of all employees assigned to any Project for which it enters into a Project Statement within ninety (90) calendar days of enrollment in E-Verify or within thirty (30) calendar days of assignment to such Project, whichever date is later; and (3) will include the language of this Article, including the requirement for further flow down, in all lower tier subcontracts/purchase orders.
- 26.3. Subcontractor shall provide a fully completed and executed copy of Exhibit "F" together herewith, and as requested by Contractor in connection with any Project Statement. Any delays resulting from Subcontractor's failures to comply with the terms of this Article 26 and all costs associated therewith shall be the responsibility of Subcontractor.
- 26.4. Contractor shall have the absolute right to withhold, as an extraordinary reserve and/or to use as set off, and without limiting other rights and remedies, an amount reasonably sufficient, as solely determined by Contractor, to remedy any issues, fines, taxes, levies, audit and legal costs, attorney's fees or other costs arising out of any failure by Subcontractor to abide by the provisions of this Article. Contractor shall be entitled to withhold the aforementioned amounts whether such issues, fines, taxes, levies, audit and legal costs, attorney's fees or other costs arise out of this MSA, any related Project Statement, or under any other subcontract, purchase contract, purchase order or other agreement between Contractor and Subcontractor on this or any other project.
- 26.5. Any breach of any provision of this Article 26 shall be deemed a material and/or substantial breach of the MSA and authorizes Contractor to suspend or terminate Subcontractor's performance on any Project immediately.

**27. PUNCH LIST AND DEMOBILIZATION:**

- 27.1. If Subcontractor does not commence and diligently pursue the completion of all "punch list" items on a Project within seven (7) days or such shorter period as necessary for Contractor to meet its "punch list" obligations, Contractor may, upon the issuance of two (2) days' advance written notice of same to Subcontractor,

complete items and deduct the cost of completing any items from the Subcontract Sum for such Project or any other Project for which Subcontractor has entered into a Project Statement, per Section 8. If the remaining amounts owed are insufficient to reimburse Contractor for completion of any punch list items for a Project, Subcontractor shall provide direct payment for all costs incurred by Contractor to complete the punch list plus fifteen percent (15%) for overhead and profit within five (5) days of delivery of Contractor's invoice.

- 27.2. Subcontractor agrees to maintain for each Project skilled and professional labor on-site with on-site supervision until punch list items are completed and accepted by Owner and Contractor and/or Architect. Contractor has the right to request that Subcontractor provide up to two (2) laborers plus Subcontractor's supervisor to attend inspections for the purpose of developing punch lists or inspecting punch list items. Such Subcontractor laborers must be able to handle on the spot repairs. In the event that Subcontractor fails to provide the requested Subcontractor personnel, Contractor may provide such personnel and back charge such costs plus fifteen percent (15%) for overhead and profit to Subcontractor.
- 27.3. Upon Substantial Completion of the work on a Project, Subcontractor shall remove from the Project site all temporary systems, tools, equipment, machinery and surplus materials not required for the continued performance of any Work under such Project Statement, unless otherwise directed by Contractor.
- 27.4. Subcontractor shall continually inspect its own work to ensure conformance with the Contract Documents for such Project. Subcontractor agrees to correct any deficiency or deviation in the Work at any point in time of discovery by any party. Additionally, Subcontractor shall address any issues identified or otherwise noted on any construction management or productivity software or online platforms used in association with the Project (including but not limited to PlanGrid or Procore Technologies) within two (2) working days of such identification.
- 27.5. All Work on each Project shall be subject to the final approval of Architect or Owner's agent (if applicable) and Contractor, and their decision shall be final.

**28. EXHIBITS:**

- 28.1. Subcontractor understands and agrees that the Exhibits are part of this MSA and shall be binding on the parties hereto. It shall be Subcontractor's duty to review all documents, and the failure to review any Exhibit or other Contract Document shall not relieve Subcontractor from the obligation to conform with its terms and obligations. For those Exhibits that are form documents, Subcontractor agrees to abide by the terms of those form documents and to utilize the form documents provided.

**29. DISPUTE RESOLUTION:**

- 29.1. Definition of Claim: A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of contractual terms, payment of money, extension of time or other relief with respect to the terms of this MSA, any related Project Statement, and any associated Contract Documents. The term "Claim" also includes other disputes and matters in question between Owner and Contractor arising out of or relating to the MSA, relevant Project Statement, and all associated Contract Documents or Claims that Subcontractor may have against Contractor for any action, inaction, error or omission of Owner. Claims must be initiated by written notice to the other party, and the responsibility to substantiate Claims shall rest with the party making the Claim.
- 29.2. Time Limit on and Assignment of Claims: Subject to the notice provisions contained herein, a Claim by Subcontractor must be finalized, documented and submitted within twenty-one (21) days after the occurrence of the event giving rise to such Claim or within twenty-one (21) days after Subcontractor first recognizes the condition giving rise to the Claim, whichever is later. If the Claim in question arises from the action, inaction, error or omission of Owner, such Claim and all rights related thereto shall be deemed assigned to Contractor upon such notice and Contractor may accept or reject such assignment. Subcontractor hereby agrees and acknowledges any payments or rights thereto related to a Claim of the type described in the foregoing sentence shall be subject to the terms and conditions of this MSA, including Section 3.1.
- 29.3. Continuing Contract Performance: Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in a Project Statement or the related Contract Documents, Subcontractor shall proceed diligently with the performance of this MSA and all Project Statements, and Contractor shall continue to make payments in accordance with the same.
- 29.4. The laws of the State of Georgia shall govern all Claims or other disputes.

- 29.5. All Claims or other disputes arising out of or related to this MSA or the performance or breach thereof, and which are otherwise not resolved pursuant to the terms hereof, shall first go to mandatory mediation using The Reid Firm, LLC, or, at the election of Contractor, to the American Arbitration Association, in accordance with the rules associated with that respective mediation entity. In the event that mediation is not successful, Contractor or Subcontractor may elect to file an action in litigation. If Contractor, at its sole discretion, does not believe mediation will be successful and/or beneficial, Contractor may pursue litigation immediately.
- 29.6. At the option of Contractor, Subcontractor agrees to resolve any controversy or claim between Contractor and Subcontractor arising out of or related to this MSA or a related Project Statement, or the breach thereof, by arbitration. If the controversy or claim involves the Owner and the Owner Contract contains a provision requiring arbitration, Contractor and Subcontractor shall conduct the arbitration in the same manner and under the same procedure as provided in the Owner Contract with respect to claims between Owner and Contractor, if applicable, except that a decision by the Architect shall not be a condition precedent to arbitration. If the controversy or claim does not involve the Owner or the applicable Owner Contract does not provide for arbitration or fails to specify the manner and procedure for arbitration, it shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect at the time of the execution of this Agreement unless the parties mutually agree otherwise. The parties further agree that an award rendered in an arbitration conducted by the American Arbitration Association shall, at a minimum, be a reasoned award; that the award may be appealed pursuant to the American Arbitration Association's Optional Appellate Arbitration Rules; and that the award shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired. The locale for the arbitration proceeding shall be Atlanta, Georgia.
- 29.7. Subcontractor agrees that in the event that litigation is to be filed, then the sole location for jurisdiction and venue of the dispute shall be the State or Superior Courts of Gwinnett County, or the Atlanta Division of the United States District Court for the Northern District of Georgia. If Subcontractor files any litigation without following the provisions of this Section and/or Contractor provides written notice of exercising its option for arbitration, Subcontractor agrees to stay such litigation until such conditions have been satisfied.
- 29.8. In the event that Contractor is involved in a mediation, arbitration, or litigation proceeding and that proceeding involves Subcontractor's work, involves questions of law or fact common to Subcontractor's work, or if complete relief cannot be afforded without Subcontractor's participation in the mediation, arbitration, or litigation proceeding, Subcontractor consents to its joinder in such proceeding. If Contractor is prohibited (by law, court order, or any other reason) from joining or elects not to join Subcontractor in such a proceeding pertaining to the Project, the Work, or any other claim impacting Subcontractor's right to payment for the Work, Subcontractor hereby expressly agrees to remain bound by the outcome of any such litigation, arbitration, or other proceedings to the same extent Contractor is bound thereby; and this includes, without limitation, Subcontractor being bound by any decision or outcome reached on any pass-through claim, whether up-stream or down-stream in nature. The foregoing agreement to mediate or arbitrate and other agreement to mediate or arbitrate with the Owner, duly consented to by the parties to this MSA, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.
- 29.9. Should Contractor employ an attorney to enforce any of the provisions hereof, or to protect its interest in any matter arising under a Project Statement or the related Contract Documents, or to collect damages for the breach of said Project Statement or Contract Documents, or to prosecute or defend any suit resulting from said Project Statement or Contract Documents, or to recover on a surety bond presented by Subcontractor, Subcontractor agrees to pay Contractor all reasonable attorney's fees, consultants' fees, experts' fees and any other costs, charges and expenses incurred in connection with all such matters.
- 29.10. THE PARTIES HEREBY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY CLAIM, ACTION, PROCEEDING, THIRD-PARTY CLAIM OR COUNTERCLAIM, WHETHER IN LAW OR IN EQUITY, ON ANY MATTERS ARISING OUT OF OR IN ANYWAY CONNECTED WITH THE SUBJECT MATTER OF THIS MSA, ANY PROJECT STATEMENT, ANY PROJECT, OR THE WORK, BECAUSE THE PARTIES HERETO, BOTH OF WHOM ARE REPRESENTED BY INDEPENDENT COUNSEL, BELIEVE THAT THE COMPLEX COMMERCIAL AND PROFESSIONAL ASPECTS OF THEIR DEALINGS WITH ONE ANOTHER MAKE A JURY DETERMINATION NEITHER DESIRABLE NOR APPROPRIATE. THIS JURY TRIAL WAIVER HAS BEEN ENTERED INTO KNOWINGLY, INTENTIONALLY AND VOLUNTARILY. IN THE EVENT OF LITIGATION, THIS MSA MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.
30. **DRONE USAGE:** Subcontractor shall obtain Contractor's written approval prior to using any unmanned aircraft systems ("Drones") at any Project site or otherwise in connection with its work under a Project

Statement. At Subcontractor's sole cost and expense and exclusive liability, Subcontractor's use of Drones shall comply with all applicable federal, state and local laws, codes, ordinances, rules and regulations including, without limitation, registering (if required) the Drone with the Federal Aviation Authority (FAA), using a properly certified remote pilot and flying the Drone only within the legally permitted areas and hours of operation. Subcontractor shall exercise the standard of care and skill of a reasonably experienced and competent certified drone pilot using a similar drone at a similar project in the same locality. Any still or video data captured by such Drones shall be deemed to be Contractor's property and shall not be used by Subcontractor for any purposes (other than for Subcontractor's internal use) without Contractor's prior written consent. Upon Contractor's request, Subcontractor shall provide Contractor with complete and accurate copies of all photos and videos of the Project and Project site captured by such Drones.

- 30.1. Prior to the use of any Drones at a Project site, Subcontractor shall provide Contractor with evidence of property and liability insurance and commercial general liability insurance (or equivalent coverage) that does not exclude coverage of liability arising from the use of Drones, which insurance shall (i) provide liability limits of at least equal to those referenced in Section 9 above, (ii) name Owner, Contractor, and others reasonably identified by Contractor as additional insureds, (iii) comply with the requirements applicable to the other insurance maintained by Subcontractor hereunder and (iv) otherwise be subject to the prior written approval of Contractor, which approval shall not be unreasonably withheld.
- 30.2. In addition to and without limiting other provisions contained herein, to the fullest extent of the law, Subcontractor shall defend, indemnify and hold harmless Owner and Contractor, as well as their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees and costs, to the extent such claims arise out of or relate to the operation of any Drones at a Project site or otherwise in connection with work by Subcontractor or its sub-subcontractor.
31. **AIRPORT PROVISIONS:** The provisions of this Article 31 apply to each Project for which the Project Statement on its face is marked as an Airport Project or such work is performed at Hartsfield-Jackson Atlanta International Airport or other International Airport. If the Project Statement for a Project does not indicate that the Project is an Airport Project or otherwise being performed at or near an airport facility, then the provisions of this Article 31 are not applicable and have no effect with respect to that Project.
  - 31.1. Notwithstanding anything to the contrary, in order to work on a Project in accordance with this Article, Subcontractor shall maintain at its own expense Comprehensive Automobile Liability Insurance for all owned, hired or non-owned vehicles with a Combined Single Limit for Bodily Injury and Property Damage in the amount of \$10,000,000 per occurrence. Such \$10,000,000 limit may be achieved through application of Excess and Umbrella limits.
32. **CCIP PROVISIONS:** The provisions of this Article 32 apply to each Project for which the Project Statement on its face is marked as insured under a CCIP or is otherwise required by Owner or Contractor to be performed under Contractor's CCIP program(s), and only such Projects. If the Project shall not be covered under Contractor's CCIP program(s), the provisions of this Article 32 are not applicable and have no effect with respect to that Project.
  - 32.1. Overview. Contractor has arranged with an entity of its choosing, (the "CCIP Administrator") to be insured under its Contractor Controlled Insurance Program ("CCIP"). The CCIP is more fully described in the insurance manual (the "CCIP Insurance Manual") for each Project insured under a CCIP. A party performing labor or services at the designated Project site is eligible to enroll in the CCIP, unless such party is an Excluded Party (as defined below). The CCIP will provide to Enrolled Parties (as defined below) Workers' Compensation and Employer's Liability, Commercial General Liability, and Excess Liability Insurance, as summarily described below, in connection with the performance of the Work on such Project (the "CCIP Coverages"). If required by Contractor or Owner, participation in the CCIP is mandatory, but not automatic. Subcontractors of every tier must follow the enrollment procedures set forth herein.
  - 32.2. Enrolled Parties and Their Insurance Obligations. CCIP Coverages shall cover Enrolled Parties. Enrolled Parties are: the Contractor and its eligible subcontractors of all tiers that enroll in the CCIP, or as Contractor, in its discretion, or Owner (subject to Contractor's approval, such approval not to be unreasonably withheld, conditioned or delayed) may designate (each such party who is enrolled/insured under the CCIP is referred to as an "Enrolled Party"). To the extent Owner desires to designate a party to be enrolled in the CCIP, Owner shall notify Contractor in writing, in which event Contractor (with the assistance of the CCIP Administrator) shall determine and notify Owner (a) whether such designated party may be an Enrolled Party and (b) the cost to Owner of enrolling such designated party in the CCIP. While the CCIP is intended to

provide broad coverages and high limits, the CCIP is not intended to meet all of the insurance needs of the subcontractors of any tier. In addition to the CCIP, Enrolled Parties shall obtain and maintain, and shall require each of their subcontractors of all tiers to obtain and maintain, the insurance coverages specified in Section 32.10, below, and in the CCIP Insurance Manual.

32.3. Excluded Parties and Their Insurance Obligations. Except as otherwise set forth herein or in the Owner Contract, the CCIP Coverages do not cover the following parties listed in this Section 32.3 (“Excluded Parties”). Excluded Parties and parties no longer enrolled in, or covered by, the CCIP shall obtain and maintain, and shall require each of their subcontractors of all tiers to obtain and maintain, the insurance coverage set forth in Section 32.10, below.

32.3.1. Hazardous materials remediation, removal and/or transport companies, and their consultants, including but not limited to asbestos abatement, and lead abatement subcontractors;

32.3.2. Architects, surveyors, engineers (including soil testing engineers) and their consultants that do not perform any actual labor at the Project site;

32.3.3. Blasting or any blasting operations;

32.3.4. Vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers and others that merely transport, pick up, deliver, or carry materials, personnel, parts or equipment, or any other items or persons to or from the Project site that do not perform any actual labor on the Project site;

32.3.5. Unskilled Temporary Laborers or Unskilled Temporary Labor agencies;

32.3.6. Subcontractors who do not perform any actual labor on the Project site; and

32.3.7. Any parties or entities not specifically identified in this Article 32 or the Owner Contract, or such parties or entities excluded by Contractor, in its discretion, even if they are otherwise eligible.

32.4. CCIP Insurance Policies Establish CCIP Coverages. The CCIP Coverages and exclusions summarized in this Article 32, and in the other Contract Documents, are set forth in full in their respective insurance policy forms. The summary descriptions of the CCIP Coverages in this Article 32, or in the CCIP Insurance Manual, are not intended to be exhaustive, or to alter or amend any provision of the actual CCIP Coverages. In the event any provision of this Article 32, the CCIP Insurance Manual, the Contract Documents, or the summary below conflicts with the CCIP insurance policies, the provisions of the actual CCIP insurance policies shall govern.

32.5. Summary of CCIP Coverages. CCIP Coverages shall apply only to those operations of each Enrolled Party performed at the Project site in connection with the Work under the applicable Project Statement, and only to eligible parties who are enrolled in the CCIP. CCIP Coverages shall not apply to ineligible parties, even if they are erroneously enrolled in the CCIP. An Enrolled Party’s operations away from the Project site, including product manufacturing, assembling, or otherwise, shall only be covered if such “off-site” operations are identified, and are dedicated solely to the Project. CCIP Coverages shall not cover “off-site” operations until receipt by subcontractor of any tier of written acknowledgment of such coverage from the CCIP Administrator. The CCIP shall provide only the following insurance to Enrolled Parties (summary only):

32.5.1. Workers’ Compensation/Employer’s Liability Insurance	
Workers’ Compensation	Statutory Limit
Employer’s Liability	
Bodily Injury By Accident - Each Accident	\$1,000,000
Bodily Injury By Disease - Each Employee	\$1,000,000
Bodily Injury By Disease - Policy Limit	\$1,000,000
32.5.2. Commercial General Liability Insurance (Equivalent to ISO Occurrence Form)	
Each Occurrence	\$2,000,000
Personal and Advertising Injury	\$2,000,000
General Aggregate/all insureds	\$4,000,000
Products-Completed Operations Aggregate/all insureds	\$4,000,000
Medical Expense Limit (Any One Person)	\$ 10,000
Fire Legal Liability (Any One Fire)	\$ 300,000

32.5.3. Excess Liability Insurance	
Each Occurrence	\$50,000,000
General Aggregate/all insureds	\$50,000,000
Products-Completed Operations Aggregate/all insureds	\$50,000,000

32.6. Recommended Subcontractor Actions. The CCIP, as outlined, is intended to afford broad coverage and relatively high limits of liability, but may not provide all the insurance needed. Subcontractor and its lower-tier subcontractors should have their insurance agent, broker or consultant review the coverage limits outlined herein for adequacy against their existing program. In order to eliminate duplicate insurance premiums, Subcontractor and its lower-tier subcontractors should amend their insurance program to recognize coverage provided to them under this CCIP. Subcontractor and its lower-tier subcontractors should ensure that their own corporate insurance programs apply excess to the CCIP. Any insurance for higher limits or other coverage that are required by contract, by law, or needed for subcontractor's or lower-tier subcontractor's protection must be purchased separately. Any additional premiums, deductibles or self-insured retention under any additional coverage shall be borne by Subcontractor or lower-tier subcontractor.

32.7. Contractor's Insurance Obligations. Contractor shall pay the costs of premiums for the CCIP Coverages. Contractor will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retroactive adjustments, return premiums, other moneys due, audits, or otherwise. Subcontractor hereby assigns, and shall ensure that each of its subcontractors of all tiers also assign to Contractor, the right to receive all such adjustments. Contractor assumes no obligation to provide insurance other than that specified in this Article 32, the CCIP Insurance Manual and in the other Contract Documents. Contractor's furnishing of CCIP Coverages shall in no way relieve or limit, or be construed to relieve or limit, Subcontractor or its subcontractors of any tier of any responsibility, liability, or obligation imposed by the Contract Documents, the CCIP Insurance Policies, or by law, including without limitation any indemnification obligations which Subcontractor or its subcontractors of any tier, owe to Contractor thereunder. Contractor reserves the right at its option, without obligation to do so, to furnish other insurance coverages of various types and limits, provided that such coverage is not less than that specified herein.

32.8. Subcontractor's CCIP Obligations. Subcontractor shall:

32.8.1. Enroll in the CCIP within five (5) days of receipt of a Notice to Proceed, shall maintain enrollment in the CCIP, and shall ensure that its eligible lower-tier subcontractors enroll in the CCIP, and maintain enrollment in the CCIP, within five (5) days of their receipt of a Notice to Proceed, and prior to the commencement of Work at the Project site. Regardless of eligibility, Subcontractor shall notify Contractor of the presence of each of its lower-tier subcontractors at the Project site at least three (3) days prior to their commencement of work on site. Should Subcontractor fail to notify Contractor of its lower-tier subcontractors within such time, Subcontractor shall indemnify, defend and hold harmless Contractor and Owner for any losses or claims arising out of or related to any failure to abide by the provisions of this paragraph.

32.8.2. Fully comply with all of the administrative, claims, safety, insurance, and all other requirements outlined in this Article 32, any instructions to bidders, CCIP Insurance Manual, the CCIP Insurance Policies, or elsewhere in the Contract Documents.

32.8.3. Incorporate the terms of this Article 32 into all subcontract agreements relating to the Project.

32.8.4. Provide to each of its subcontractors of all tiers a copy of the CCIP Insurance Manual and ensure such subcontractors' compliance with the provisions of the CCIP Insurance Policies, the CCIP Insurance Manual, this Article 32, instructions to bidders, and the Contract Documents. The failure of Subcontractor to provide each of its eligible lower-tier subcontractors with a copy of the same shall not relieve Subcontractor, or any such lower-tier subcontractors, of any of the obligations contained therein.

32.8.5. Acknowledge, and require all of its lower-tier subcontractors to acknowledge, in writing, that Contractor and the CCIP Administrator are not agents, partners, or guarantors of the insurance companies providing the CCIP Coverages (each such insurer is a "CCIP Insurer"), that neither the Contractor nor the CCIP Administrator is responsible for any claims or disputes between or among Subcontractor, its lower-tier subcontractors, and any CCIP Insurer(s), and that neither Contractor nor the CCIP Administrator guarantees the solvency, or the availability of limits, of any CCIP Insurer(s). Any type of insurance coverage or limits of liability in addition to the CCIP Coverages that Subcontractor or its subcontractors of any tier require for its or their own protection, or that is required by applicable laws or regulations, shall be Subcontractor's or just lower tier subcontractor's sole responsibility and expense, and shall not be billed to Contractor.

- 32.8.6. Comply, and require all of its lower-tier subcontractors to comply with CCIP Administrator's instructions for enrolling in the CCIP and reporting on-site payroll and work-hours.
- 32.8.7. Cooperate fully with the CCIP Administrator and the CCIP Insurers, as applicable, in its or their administration of the CCIP.
- 32.8.8. Provide, within five (5) business days of Contractor's or the CCIP Administrator's request, all documents or information as requested. Such information may include, but may not be limited to, payroll and work-hour records, certified copies of insurance coverages, declaration pages of coverages, rating pages, certificates of insurance, underwriting data, prior loss history information, safety records or history, OSHA citations, or such other data or information as Contractor, the CCIP Administrator, or CCIP Insurers may request in the administration of the CCIP, or as required in the CCIP Insurance Manual.
- 32.8.9. Subcontractor shall institute a modified return to work program for any injured employee who is covered or entitled to coverage under the Workers' Compensation insurance provided in the CCIP.
- 32.9. Net-Bid. Subcontractor and its lower-tier subcontractors shall exclude the Costs of CCIP Coverages in their base bids for the Project and all subsequent change orders unless otherwise specified or noted in the Project Statement. The "Costs of CCIP Coverages" is defined as the amount of Subcontractor's and any lower-tier subcontractors' reduction in insurance costs due to eligibility for CCIP Coverages. The Costs of CCIP Coverages shall include insurance premiums, related taxes and assessments, markup on the insurance premiums and losses retained through the use of a self-funded program, self-insured retention or deductible program. The Cost of CCIP Coverages shall also include expected losses within any retained risk (first dollar cost).
- 32.10. Additional Insurance Required From All Subcontractors. In addition to the insurance provided under the CCIP, Subcontractor shall obtain and maintain the following insurance, as set forth in this Section 32.10, from companies acceptable to Contractor. The limits and types of insurance required by this Section 32.10 are the minimums required and shall not relieve, reduce or limit the liability of Subcontractor.
- 32.10.1. Subcontractor shall furnish a certificate of insurance, and the appropriate endorsements, satisfactory to Contractor, from each insurance company providing coverage to Subcontractor. The certificate shall show the required insurance in force and state that the insurance will not be cancelled, non-renewed or materially changed except after providing at least thirty (30) days actual, written notice to Contractor or longer if required by the Contract Documents. Contractor shall have the right, but not the obligation, to review all of Subcontractor's insurance policies applicable to the Project.
- 32.10.2. With respect to the insurance required to be furnished by Subcontractor under this Section 32.10, including the Workers' Compensation, Employers Liability, General Liability, Automobile Liability, and Excess Liability policies, Subcontractor agrees to waive all rights of subrogation against Contractor, the Owner, and their respective officers, directors, employees, affiliates and subsidiaries, and any other entity(s) or person(s) required by the Owner Contract.
- 32.10.3. Subcontractor shall immediately advise Contractor, in writing, of the facts and details of every accident and personal injury occurring in connection with the Work and shall make available, if requested by Contractor, a copy of every accident report made to Subcontractor's insurance carrier(s).
- 32.10.4. Before beginning any work on the Project, Subcontractor shall cause Contractor, Owner, and their respective officers, directors, employees, affiliates and subsidiaries, and any other entity(s) or person(s) required by the Owner Contract, to be named as additional insureds under Subcontractor's General Liability, Automobile Liability and Excess Liability Policy(s). Subcontractor and its insurer(s) agree that for liabilities and responsibilities assumed by Subcontractor under this MSA, any relevant Project Statement, and/or otherwise such policies shall be primary insurance for the Contractor and any other Additional Insured(s) and that the insurance maintained by Contractor and other Additional Insureds shall be Excess and Non-Contributory.
- 32.10.5. Minimum Coverages Required.
- 32.10.5.1. General Liability Coverage (Off-Site):
- Occurrence Form
  - Premises Operations with no exclusion for Explosion, Collapse and Underground
  - Products and Completed Operations Hazard (3 yrs after completion of the Work)



- Contractual Liability Coverage (a/k/a insured contract coverage)
- Broad Form Property Damage Liability Coverage
- Independent Contractors Coverage
- Personal Injury Coverage with Contractual and Fellow employees Exclusion deleted.
- Per Project General Aggregate Limit
- Waiver of Subrogation
- Additional Insured endorsement as set out in Section 32.10.4,
- Amend Definition of Insured Contract when working within 50 foot of a railroad
- Unintentional Errors & Omissions
- Incidental Medical Malpractice
- 30 Days' Notice of Cancellation

32.10.5.2. Automobile Liability Coverage (On-Site & Off-Site):

- Comprehensive Form
- Any Auto "Symbol 1"
- Waiver of Subrogation
- Hired Autos as Autos Specified as Covered Autos You Own
- Employees as Insureds
- Endorsement for Motor Carrier Act MCS-90 if transporting hazardous materials
- 30 Days' Notice of Cancellation

32.10.5.3. Workers' Compensation & Employers Liability Coverage (Off-Site):

- Waiver of Subrogation
- Voluntary Compensation – "If Any" Basis
- USL&H Act – If required
- Maritime/Jones Act if working on water
- Unintentional Errors & Omissions
- 30 Days' Notice of Cancellation

32.10.5.4. Excess Liability Coverage (Must cover EL, GL and AL)

- Follow-Form

32.10.5.5. Professional Liability as per Section 9.6

32.10.5.6. Pollution Liability as per Section 9.7

32.10.5.7. For any subcontractor or lower-tier subcontractor not enrolled in the CCIP, minimum coverages required in Sections 32.10.5.1, .3, and .4 above must apply to all operations, both on and off the Project site.

32.10.6. Minimum Limits of Liability Required.

32.10.6.1. General Liability

- \$1,000,000 Each Occurrence
- \$1,000,000 Personal Injury/Advertising Injury
- \$2,000,000 General Aggregate
- \$2,000,000 Products/Completed Operations Aggregate
- \$ 50,000 Fire Damage (any one fire)
- \$ 5,000 Medical Expense (any one person)

32.10.6.2. Automobile Liability

- \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage (Each Accident) (see Article 31 for Projects marked as Airport Projects).

32.10.6.3. Workers' Compensation

- Statutory Limits

32.10.6.4. Employer's Liability

- \$1,000,000 Each Accident
- \$1,000,000 Each Employee
- \$1,000,000 Policy Limit

32.10.6.5. Excess Liability (Must cover EL, GL and AL)

- \$2,000,000 Each Occurrence
- \$2,000,000 General Aggregate
- \$2,000,000 Products/Completed Operations Aggregate

32.10.6.6. Professional Liability as per Section 9.6

32.10.6.7. Pollution Liability as per Section 9.7

32.10.6.8. For any subcontractor or lower-tier subcontractor not enrolled in the CCIP, minimum coverages required in Sections 32.10.6.1, .3, .4, and .5 above must apply to all operations, both on and off the Project site.

32.10.6.9. Subcontractor's failure to procure or maintain the insurance required by this Section 32.10, or to ensure that all of its lower-tier subcontractors of all tiers maintain the required insurance during the entire term of the MSA and/or each applicable Project Statement shall constitute a material breach under which Contractor may immediately suspend or terminate the MSA and/or any applicable Project Statement or, at its discretion, procure or renew such insurance to protect Contractor's interests, and pay any and all premiums in connection therewith, and withhold or recover all monies so paid from Subcontractor. Any other insurance or any increase of limits of liability not described herein which Subcontractor or a lower-tier subcontractor of any tier requires for its or their own protection or pursuant to any statute shall be its own responsibility and expense.

32.11. Subcontractor's Representations and Warranties to Contractor. Subcontractor represents and warrants to Contractor, and shall use its best efforts to ensure that its lower-tier subcontractors of all tiers represent and warrant to Contractor that:

32.11.1. All information they submit to Contractor, or to the CCIP Administrator, shall be accurate and complete.

32.11.2. They have had the opportunity to read and analyze copies of the CCIP insurance policies that are on file in Contractor's office, and that they understand the CCIP Coverages. Any reference or summary in the Project Statement, this Article 32, the CCIP Insurance Manual, or elsewhere in any other Contract Documents as to amount, nature, type or extent of CCIP Coverages and/or potential applicability to any potential claim or loss is for reference only. Subcontractor and its lower-tier subcontractors of all tiers have not relied upon said reference but solely upon their own independent review and analysis of the CCIP Coverages in formulating any understanding and/or belief as to amount, nature, type or extent of any CCIP Coverages and/or its potential applicability to any potential claim or loss.

32.12. Audits. Subcontractor agrees that Contractor, the CCIP Administrator, and/or any CCIP Insurer may audit Subcontractor's, or any of its lower-tier subcontractors' payroll and work-hour records, books and records, insurance coverages, insurance cost information, or any other information that Subcontractor provides to Contractor, the CCIP Administrator, or the CCIP Insurers to confirm their accuracy and to identify insurance cost as required by Section 32.9 herein.

32.13. Contractor's Election to Modify or Discontinue the CCIP. Contractor may, for any reason, modify the CCIP Coverages, discontinue the CCIP, or request that Subcontractor, or any of its lower-tier subcontractors, withdraw from the CCIP upon thirty (30) days written notice. Upon such notice Subcontractor and/or one or more of its lower-tier subcontractors, as specified by Contractor in such notice, shall obtain and thereafter maintain during the performance of the Work, all of the CCIP Coverages (or a portion thereof as specified by Contractor). Such coverages shall be at Contractor's expense, but only to the extent of Subcontractor's or lower-tier subcontractor' CCIP Insurance Deduct for the Cost of CCIP Coverages. The form, content, limits of liability, cost, and the insurer issuing such replacement insurance shall be subject to Contractor's approval.

32.14. Withholding of Payments. In the event that a Contractor audit of Subcontractor's records and information, as permitted in this Article 32 or otherwise in this MSA, any Project Statement, or other Contract Documents, reveals a discrepancy in the insurance, payroll, work-hours, safety, or any other information required by the Contract Documents to be provided by Subcontractor to Contractor, Contractor shall have the right to fully deduct from the Subcontract Sum for any Project(s) for which Subcontractor is providing work in connection with a Project Statement of all resulting insurance costs, and all audit costs. Audit costs shall include, but shall not be limited to, the fees of the CCIP Administrator, and the fees of attorneys and accountants conducting the audit and review. If Subcontractor, or its lower-tier subcontractors, fail to timely comply with the provisions of this Article 32, Contractor may withhold any payments due to Subcontractor or its lower-tier subcontractor(s) until such time as they have performed the requirements of this Article 32.

- 32.15. Waiver of Subrogation. Where permitted by law, Subcontractor hereby waives all rights of recovery by subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against Owner, Contractor, the CCIP Administrator, its or their officers, agents, or employees, any other subcontractor or lower-tier subcontractor performing Work or rendering services on behalf of Contractor in connection with the planning, development and construction of the Project and any other entity(s) or person(s) required by the Owner Contract. Subcontractor shall also require that all Subcontractor-maintained insurance coverage related to the Work include clauses providing that each insurer shall waive all of its rights of recovery by subrogation against Owner, Contractor, the CCIP Administrator, its or their officers, agents, or employees, any other subcontractor or lower-tier subcontractor performing Work or rendering services on behalf of Contractor in connection with the planning, development and construction of the Project and any other entity(s) or person(s) required by the Owner Contract. Where permitted by law, Subcontractor shall require similar written express waivers and insurance clauses from each of its lower-tier subcontractors of every tier. A waiver of subrogation shall be effective as to any individual or entity, even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium, directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.
- 32.16. Duty of Care. Nothing contained in this Article 32, or in the CCIP Insurance Manual, shall relieve Subcontractor, or any of its lower-tier subcontractors, of their respective obligations to exercise due care in the performance of their duties in connection with the Work under any Project Statement, and to complete such Work in strict compliance with the Contract Documents.
- 32.17. Conflicts. In the event of a conflict, the provisions of the CCIP insurance policies shall control; then the provisions of this Article 32; then the remaining provisions of this MSA, the applicable Project Statement(s), and any other related Contract Documents; then the provisions of the CCIP Insurance Manual.
- 32.18. Safety. Subcontractor shall fully comply with all safety requirements set forth in the Contract Documents. Subcontractor shall establish a safety program that, at a minimum, complies with all Federal, state, and local safety standards, and any Minimum Safety Standards established by Contractor for the Project.
- 32.19. Limitation. The CCIP insurance and the additional insurance requirements described in this Article 32 exist for the sole and exclusive benefit and protection of Contractor and the enrolled subcontractors of any tier and any other entity(s) or person(s) required by the Owner Contract. The CCIP insurance and additional required insurance described in this Article 32 are not intended to benefit any other parties including, without limitation, parties not covered by the CCIP, Excluded Parties or claimants (regardless of whether such claimant's claim(s) are covered by the CCIP and regardless of against whom such claimant makes claim(s)). Contractor is not responsible for enforcing any term of this Article 32 for the benefit of any party not covered by the CCIP.

### 33. MISCELLANEOUS PROVISIONS:

- 33.1. **No negotiations, oral agreements, or other understanding by the parties shall in any way modify this MSA, or the terms or the conditions hereof. This MSA contains the complete agreement between the parties and shall take precedence over any prior agreement in relation to any matter set forth herein, and any prior agreements or other understandings are void unless expressly set forth herein. Any terms or conditions set forth in and/or contained within Subcontractor's invoices or any other of Subcontractor's document(s) shall not alter, supersede or modify the obligations and duties set forth in this MSA, regardless of any resulting Contractor's acknowledgement or signature on Subcontractor's invoices. This MSA can only be modified and/or altered by a Project Statement or other written agreement executed by an officer of both Contractor and Subcontractor.**
- 33.2. Any testing, investigations, reports or other information regarding the soils or other subsurface conditions present at a Project site provided to Subcontractor are for its information only, and are provided without any representation or warranty whatsoever. Subcontractor is not advised or entitled to rely thereon. Subject to arrangements with Owner, Subcontractor is advised to undertake whatever steps it deems necessary, including testing, to provide a contract price for each Project sufficient to complete its work regardless of the Project subsurface conditions actually encountered by Subcontractor.
- 33.3. Parking will not be provided by Contractor. Contractor makes no representations with respect to the availability of parking at, in, or around any Project site. Subcontractor shall be responsible for making appropriate parking arrangements for each Project, as well as transportation between such parking and such Project site, subject to Contractor's approval.

- 33.4. When Subcontractor is required to provide written notice or request under this MSA, such written notice or request shall only be effective if (a) hand delivered to Contractor's Project Manager for the Project to which the notice applies with a written acknowledgement of receipt, (b) by statutory overnight mail or with a reputable overnight courier service with signature of delivery required to Contractor's principal office address referenced on the face of this MSA or the most recent Project Statement, if different, attention to the Project Manager for the Project to which the notice applies, or (c) by email to the Project Manager for the Project to which the notice applies with a subject line containing the words "Contract Notification". All such written notices or requests shall be deemed delivered the day after receipt if sent by statutory overnight mail or reputable overnight courier service. Hand delivery shall be deemed received the date delivered. Email shall be deemed received the date sent. No other delivery method by Subcontractor shall constitute written notice under this MSA. Daily report entries shall not constitute written notice or request under this MSA.
- 33.5. In the event that any portion of this MSA, any related Project Statement, and any associated Contract Documents is determined judicially or otherwise to be invalid or unenforceable, the courts or an arbitrator (if applicable) may rewrite the invalid or unenforceable portion in order to make the provision valid and enforceable in a manner consistent with the overall terms of this MSA, the relevant Project Statement, and the associated Contract Documents. In the event that any portion of this MSA, the relevant Project Statement, and/or the associated Contract Documents are invalid and unenforceable, and if the portion cannot be re-written, as described immediately above, to make it enforceable, then said invalid or unenforceable portion shall be deemed as severable from the rest of such agreements.
- 33.6. Subcontractor acknowledges that it has either sought independent legal counsel or has had ample opportunity to do so before execution of this MSA and all associated documents, and that it has thoroughly reviewed and negotiated the terms hereof and that the terms of this MSA shall not be construed against Contractor in the event of an ambiguity.
- 33.7. Even if this MSA or any subsequent Project Statement are executed after commencement of Subcontractor's performance, the terms and conditions of this MSA and the relevant Project Statement shall apply to all work performed by Subcontractor for such Project.
- 33.8. Non-Solicitation Provision: Subcontractor acknowledges and stipulates that in the course of performing work on Projects pursuant to this MSA, it has or will learn about Contractor's business, services, materials, and the manner in which they were and are developed, marketed, serviced and provided to Owner(s). Subcontractor knows and acknowledges that Contractor has invested considerable time and money in developing its customer base, which is valuable and unique to Contractor, and of benefit to Contractor. Subcontractor further acknowledges that Subcontractor must keep secret all pertinent information that may be divulged to Subcontractor about Contractor's business concepts, ideas, programs, plans and processes, so as not to aid Contractor's competitors. Accordingly, Subcontractor and Contractor agree that Contractor is entitled to the following protection, which Subcontractor agrees is reasonable:

Subcontractor agrees that during the performance of its work on any Project and for a period of one (1) year following the termination of Subcontractor's performance upon such Project in the territory of Georgia, Florida, Tennessee, Alabama, Ohio, South Carolina and North Carolina, it will not, on its own behalf or on behalf of any person, firm, partnership, association, corporation, or other business organization, entity or enterprise, knowingly solicit, call upon, or initiate communication or contact with any person or entity or any representative of Owner, with whom Subcontractor had material contact during such Project performance, with a view to the sale or the provision of any General Contracting or Construction Management services on commercial or governmental projects.

For purposes of this Section 33.8, the term "Contractor," shall include any parents, affiliates, joint ventures, and subsidiaries of Contractor, including any entity or joint venture in which Contractor has an ownership interest. For purposes of this Section 33.8, the term "Subcontractor" shall include any subsidiaries of or other entities ultimately owned or controlled by "Subcontractor."

This Section 33.8 shall survive any termination of this MSA.

- 33.9. During the term of this MSA, Subcontractor understands and stipulates that its preconstruction bids and/or pricing are submitted to Contractor for the express purpose of allowing Contractor to include it in its bid and/or pricing to Owner, and that Contractor is entitled to rely upon the same for a period of one hundred and twenty (120) days following Subcontractor's submission of the preconstruction bid and/or pricing to Contractor or longer if stipulated with Subcontractor's pricing.

- 33.10. To the extent any Owner Contract related to a Project Statement provides for the confidentiality of any of Owner's proprietary or otherwise confidential information disclosed in connection with the performance of such Project Statement, Subcontractor is equally bound by Owner's confidentiality requirements. This Section 33.9 shall survive any termination of this MSA.
- 33.11. The version of this MSA and any subsequent Project Statement located at Contractor's main office shall control to the extent of any disagreement between it and any other version or copy.
- 33.12. Any provisions or terms of this MSA or any subsequent Project Statement inserted to modify such MSA or Project statement, whether in handwriting, typewritten, added electronically, or otherwise, shall only be considered a part of this MSA or such Project Statement if the initials of each signatory, or other authorized representative of each party, to this MSA or such Project Statement are placed next to such insertion. Any insertion not accompanied by such initials shall be of no force or effect.
- 33.13. In each instance where the term "including" is used in this MSA or any subsequent Project Statement, it shall be deemed to mean "including, without limitation,".
- 33.14. There are no intended third-party beneficiaries of this MSA or any subsequent Project Statement.
- 33.15. Nothing in this MSA confers any exclusive rights to Subcontractor and Subcontractor agrees that Contractor may freely contract with third parties for services that are the same as or similar to the services or work provided by Subcontractor under this MSA.
- 33.16. This MSA does not give to Subcontractor any right to a minimum level or volume of work. Contractor makes no commitment to Subcontractor to use its services or work or to incur any charges other than to pay for work performed in accordance with a Project Statement or otherwise authorized and performed in accordance with this MSA.



DATE:

SUBCONTRACT NO.:

MSA NO.

SUBCONTRACTOR:

ATTACHMENT 2
PROJECT STATEMENT

PROJECT NO. SCOPE OF WORK: PROJECT MANAGER:

PROJECT NAME: SUBCONTRACT SUM: SUPERINTENDENT:

PROJECT ADDRESS: Retainage Percentage: Pay App Due Date:

Bond Required [Y/N]: Insured under CCIP [Y/N]: Airport Project [Y/N]:

This Project Statement, Job No. (Project Statement) is made by and between New South Construction Company LLC, whose principal office is at 1180 West Peachtree St, Suite 700 Atlanta, GA 30309 (Contractor), and located at (Subcontractor), and is entered into pursuant to and shall incorporate the terms and conditions of the latest Master Services Agreement (MSA), executed by and between the parties hereto.

WITNESSETH: That Subcontractor and Contractor, for the consideration hereinafter named, agree as follows:

1. SCOPE OF WORK/COMPENSATION:

- 1.1 For and in consideration of the Subcontract Sum set forth above, Subcontractor shall furnish and pay for all materials, labor, services, supplies, scaffolding, equipment, tools, appliances, and everything necessary for completion and functional installation of its Scope of Work, as set forth in Exhibit 1 hereto, for (hereinafter called "Project"), for (hereinafter called "Owner"), in accordance with the contract between Owner and Contractor (hereinafter called "Owner Contract"), the General Conditions of said Owner Contract and any Supplemental Conditions, Modifications, Drawings, Specifications, and any other documents referenced in the Owner Contract, all of which, General Conditions, Drawings, Specifications, and any other documents referenced in the Owner Contract (hereinafter called "Contract Documents"), form a part of the contract between Owner and Contractor, and are hereby incorporated into this Project Statement by reference.
1.2 Subcontractor hereby acknowledges that a copy of the Owner Contract, including the Contract Documents, has been made available to it. Subcontractor hereby agrees to be bound by all the terms of the Owner Contract, including the Contract Documents, in accord with paragraph 1.1 of the MSA.
1.3 This Project Statement may be subject to the Architect's and Owner's approval. If the Architect and/or Owner disapprove of Subcontractor and/or this Project Statement, this Project Statement shall be considered terminated by Owner in accord with paragraph 20.1 of the MSA.
1.4 Subcontractor warrants and acknowledges that it has either had the opportunity to or has thoroughly reviewed the Contract Documents and approved the Subcontract Sum in view of the work to be performed under this Project Statement, and Subcontractor recognizes that Contractor has relied and will act in reliance on the Subcontract Sum in entering into contractual agreements with Owner and other subcontractors. Subcontractor agrees that no modification or termination of this Project Statement shall be made due to failure to review any Contract Documents or any error or omission on the part of Subcontractor with respect to the Subcontract Sum specified herein or the full requirements of the Contract Documents.

2. PROJECT SCHEDULE: All Work under this Project Statement is to be completed in accordance with the Project Schedule attached hereto as Exhibit "3." Time is of the essence of this Project Statement, and any breach of same shall go to the essence hereof, and Subcontractor, in agreeing to complete the work within the time set forth on this Project Statement, has taken into consideration and made allowances for all normal construction hindrances and delays incident

to its work, including, without limitation, (i) the requirements of the Contract Documents, the location, condition, layout, access to the site, the Work, storage, and the nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. If a force majeure event occurs, subject to applicable notices for delay, Subcontractor may be entitled to an equitable extension of time only. Subcontractor, to the fullest extent of the law, shall not be entitled to any increase in the Subcontract Sum for a force majeure event, except to the extent that Contractor is entitled to compensation for such delays from Owner, and then only to the extent of any amounts that Contractor, on behalf of Subcontractor, actually receives from Owner for such delays. Force majeure events shall include: Acts of Government – such as limitations on public gatherings, closures of facilities, social distancing recommendations or requirements; Acts of God – such as fires, hurricanes, earthquakes and floods; public health related issues – such as flu, epidemic, pandemic, contagion, serious illness or plagues, disease, emergency or outbreak; and similar events that are beyond the control of the parties. Further any extension of time to Subcontractor is expressly contingent on Owner’s grant of an equitable adjustment to Contractor. Subcontractor shall have the same right to an equitable adjustment in the Project Schedule to the extent provided by Owner to Contractor.

3. **EXHIBITS:** The following exhibits are incorporated into this Project Statement, in addition to the MSA, Owner Contract, and Contract Documents, as referenced above. Subcontractor represents that it has and/or had the opportunity to carefully examine and understand all the incorporated documents. This Project Statement and the incorporated documents are intended to supplement and compliment the others and shall, where possible, be thus interpreted. If, however, any provision of these documents conflicts, the provision imposing the greater duty or obligation on the Subcontractor shall govern.

<u>Exhibit</u>	<u>Name of Attachment/Exhibit</u>	<u>Initials of Subcontractor indicating receipt and acceptance of the terms thereof</u>
Exhibit 1	Scope of Work	Acceptance: [    ]
Exhibit 2	Contract Drawings and Specifications	Acceptance: [    ]
Exhibit 3	Project Schedule	Acceptance: [    ]
Exhibit 4	Interim Lien Waiver and Release upon Payment	Acceptance: [    ]
Exhibit 5	Waiver and Release upon Final Payment by Subcontractor (including Exhibit 5(B) – Affidavit for Final Payment)	Acceptance: [    ]
Exhibit 6	Certificates of Insurance	Acceptance: [    ]
Exhibit 7	State-Specific Addendum (if Project is located outside of Georgia)	Acceptance: [    ]
Exhibit 8	Additional Terms and Conditions	Acceptance: [    ]

4. **MISCELLANEOUS:**

- a. The parties hereto acknowledge that they have read this Project Statement and understand it and agree to be bound by its terms and conditions. They further agree that the MSA together with this Project Statement, the Owner Contract, and the Contract Documents, constitute the entire agreement between the parties hereto with respect to the subject matter hereof. Paragraph headings are solely for organizational purposes and shall not be interpreted to add any additional meaning.
- b. In the event that any portion of this Project Statement, the MSA, and any associated Contract Documents is determined judicially or otherwise to be invalid or unenforceable, the courts or an arbitrator (if applicable) may rewrite the invalid or unenforceable portion in order to make the provision valid and enforceable in a manner consistent with the overall intent and terms of this Project Statement, the MSA, and the Contract Documents. In the event that any portion of this Project Statement, the MSA, or the Contract Documents are invalid and unenforceable, and if the portion cannot be re-written, as described immediately above, to make it enforceable, then said invalid or unenforceable portion shall be deemed as severable from the rest of the Project Statement, the MSA, or the Contract Documents.
- c. Subcontractor acknowledges that it has either sought independent legal counsel or has had ample opportunity to do so before execution of this Project Statement and all associated documents, and that it has thoroughly reviewed and negotiated the terms of this Project Statement and all associated/incorporated documents and that the terms of this Project Statement and all associated documents shall not be construed against the Contractor in the event of an ambiguity in the documents.
- d. For all work and materials subject to a warranty, Subcontractor shall remedy or diligently pursue such remedy at its own expense all faulty materials or workmanship and any other defects within three (3) days of notice or fewer days as necessary or reasonably requested by Contractor.

- e. Even if this Project Statement is executed after commencement of Subcontractor's performance, the terms and conditions of this Project Statement shall apply to all work performed by Subcontractor for the Project listed above.
- f. Any provisions or terms of this Project Statement inserted to modify this Project Statement, whether in handwriting, typewritten, added electronically, or otherwise, shall only be considered a part of this Project Statement if the initials of each signatory, or other authorized representative of each party, to this Project Statement are placed next to such insertion. Any insertion not accompanied by such initials shall be of no force or effect.
- g. Subcontractor shall be bound by the safety rules and regulations in the Procore folder for the Project, including but not limited to the fire protection plan and site-specific safety manual, as well as any water intrusion or other project-specific requirements in effect from time to time for the Project.
- h. This Project Statement may be executed electronically and in counterparts, which together shall constitute the entire agreement. Electronic signatures, copies, and photocopies of this Project Statement shall have the same force and effect as the original. Subcontractor agrees and stipulates that the "electronic signature" provided for any documents submitted in accordance with this Project Statement, MSA or otherwise to Contractor, online or otherwise electronically submitted, shall have the same affect and legitimacy as if submitted on hard copies with handwritten signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Project Statement by their duly authorized representatives on the date(s) set forth below.

**CONTRACTOR:**

**NEW SOUTH CONSTRUCTION COMPANY**

By: \_\_\_\_\_  
Authorized Signature

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SUBCONTRACTOR:**

**[INSERT COMPANY NAME]**

By: \_\_\_\_\_  
Authorized Signature

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



# EXHIBIT A

## SUBCONTRACTOR'S REQUEST FOR PAYMENT AFFIDAVIT

Send completed form to: **accounting@newsouthconstruction.com**

TO: NEW SOUTH CONSTRUCTION COMPANY  
1180 WEST PEACHTREE STREET, SUITE 700  
ATLANTA GA 30309  
FROM: (SUBCONTRACTOR)

JOB NAME: \_\_\_\_\_  
PERIOD ENDING: \_\_\_\_\_  
SUBCONTRACT # \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PAY REQUEST # \_\_\_\_\_

ORIGINAL CONTRACT AND CHANGE ORDER AMOUNTS		
1	ORIGINAL CONTRACT AMOUNT	\$
2	TOTAL <b>EXECUTED</b> C.O.'S (total executed change orders from page 2)	\$
3	REVISED CONTRACT AMOUNT (line 1 plus line 2)	\$
4	TOTAL COMPLETED TO DATE (see total for column G on page 2)	\$
5	LESS RETAINAGE TO DATE (line 4 times 10%)	\$
6	TOTAL AMOUNT DUE (line 4 minus line 5)	\$
7	LESS PREVIOUS REQUESTS (line 6 from previous pay application)	\$
8	CURRENT AMOUNT DUE (line 6 minus line 7)	\$

The undersigned personally and on behalf of the Subcontractor set forth above, intending to induce New South Construction Company ("Contractor") to make the payment set forth above, hereby swears, affirms and agrees as follows:

1. That, except for retainage if any held by Contractor, the Payment Amount set forth above, together with any prior payments, constitutes full and complete payment for all material, labor, and supplies, equipment, impacts, goods, services and costs of any kind supplied by Subcontractor to the Project, through and including the Payment Application date set forth above. Any exceptions to this release are as follows:     N/A
2. That Subcontractor has or will within ten (10) days of receipt of the Payment Amount set forth above pay in full all sub-subcontractors, suppliers, materialmen, laborers or others for all material, labor, supplies, equipment, impacts, goods, services and costs of any kind supplied to Subcontractor for use or incorporation into the Project, through and including the Payment Application Date set forth above.
3. That the terms and conditions of the accompanying Interim or Final Lien Waiver supplied by Subcontractor to Contractor and incorporated herein by reference are true and correct.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Print Name**  
Personally and on Behalf  
of Subcontractor

Sworn and subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**Notary Public** \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

PERIOD ENDING:  
 JOB NAME:  
 FLOOR: \_\_\_\_\_  
 SUBCONTRACT #:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE (*BREAKDOWN)	D WORK COMPLETED		F TOTAL MATL STORED (**NOTE)	G TOTAL WORK IN PLACE AND MATL STORED	H %	I BALANCE COMPLETE
			PREVIOUS APPLICATION	THIS APPLICATION				
<b>Original Contract Breakdown (list items below)</b>								
		\$	\$	\$	\$	\$		\$
<b>Executed Change Orders (list items below)</b>								
		\$	\$	\$	\$	\$		\$
<b>REVISED CONTRACT TOTALS:</b>		\$	\$	\$	\$	\$		\$

SUBCONTRACTOR: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\* BREAKDOWN SHALL BE APPROVED BY CONTRACTOR AND NO SINGLE ITEM SHALL EXCEED \$40,000.00 WITHOUT PRIOR APPROVAL.  
 \*\*NOTE: IF MONEY IS REQUESTED IN THIS COLUMN, A STORED MATERIAL BREAKDOWN OR PRICED INVENTORY MUST ALSO BE ATTACHED.

Send completed form to: [accounting@newsouthconstruction.com](mailto:accounting@newsouthconstruction.com)

# EXHIBIT B

## SUBCONTRACTOR'S SUB-SUBCONTRACTOR AND SUPPLIER AFFIDAVIT

TO: JOB NAME: {PROJECTS.NAME}  
PERIOD ENDING:  
SUBCONTRACT #

FROM: (SUBCONTRACTOR)  
 {COMPANY.NAME}  
 {ADDRESSES.ADDRESS1}  
 {ADDRESSES.CITY}, {ADDRESSES.STATE} {ADDRESSES.ZIP} PAY REQUEST #

The undersigned personally and on behalf of the Subcontractor set forth above, intending to induce \_\_\_\_\_ ("\_\_\_\_") to make the payment set forth above, hereby swears, affirms and agrees that the following is a true and correct list of all sub-subcontractors and suppliers that have provided services to Subcontractor or on behalf of Subcontractor on the above-referenced Project :

Sub-Subcontractor or Supplier Name and Phone Number	Scope of Work	Work Performed/ Materials Supplied on- site/off-site/both

\_\_\_\_\_  
**Signature**

Sworn and subscribed before me  
 this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
**Print Name**  
 Personally and on Behalf  
 of Subcontractor

\_\_\_\_\_  
**Notary Public**  
 My Commission Expires: \_\_\_\_\_

# **EXHIBIT C**

## **CONTRACTOR'S STANDARD ACCIDENT PREVENTION PROGRAM FOR SUBCONTRACTORS**

**THIS PROGRAM IS MADE AVAILABLE TO YOU IN ACCORDANCE WITH THE SAFETY CLAUSE OF YOUR SUBCONTRACT. ALL OR PARTS OF THE CONTENTS OF THIS PROGRAM WILL APPLY TO YOUR WORK DEPENDING ON THE NATURE OF YOUR WORK AND THE SEQUENCE OF YOUR WORK. SUBCONTRACTOR IS RESPONSIBLE FOR ALL OF THE FOLLOWING AS WELL AS ADDITIONAL SAFETY RULES AND REGULATIONS NOTED IN THE SUBCONTRACT, INCLUDING WITHOUT LIMITATION, PROJECT RULES IN EFFECT FROM TIME TO TIME, AND CONTRACTOR'S PROJECT SAFETY MANUAL.**

### **1. ACCIDENT PREVENTION RESPONSIBILITY**

- 1.1. Full authority for enforcement of the Standard Accident Prevention Program shall be vested in the general contractor's superintendent in charge. Subcontractors will be responsible for full enforcement and compliance with the program and any specific jobsite safety requirements required by the general contractor's superintendent.

### **2. ADVANCE ANALYSIS**

- 2.1. Before starting work on any job, the subcontractor shall make a complete analysis of the plans and specifications in order to determine the exposure to accidents, which may develop on the jobsite. With this information, the subcontractor will be able to make plans to control all exposures before contributing to an accident or loss.

### **3. SAFETY INSTRUCTIONS WITH WORK ASSIGNMENTS**

- 3.1. Any subcontractors employee of whatever supervisory level upon assigning work to any man or group of men will in each instance give sufficient caution with the assignment to adequately provide safety in the operation. This same principle will apply when changing personnel from one work area to another. Hazardous chemicals will be discussed with guidelines on use and protective equipment required.

### **4. SAFETY MEETINGS**

- 4.1. All subcontractors shall attend periodic supervisory safety meetings held by the general contractor's superintendent or his designated representative. (at least monthly)
- 4.2. Each subcontractor's foreman shall hold weekly "tool box" safety meetings with their own personnel to encourage employees' interest in safety and to give specific safety instructions relative to existing or expected hazards. Notes and minutes of these meetings shall be recorded, with 'sign-in' sheets and submitted to the general contractor's superintendent and main office.

### **5. CPR / 1<sup>st</sup> AID / BLOODBORNE PATHOGENS**

- 5.1. Adequate first aid supplies shall be maintained by the subcontractor. These should be stored in a special kit or box. Treatments shall be administered by someone who has completed a CPR / 1<sup>st</sup> Aid / BBP training course, appointed by the subcontractor.

### **6. ACCIDENT INVESTIGATION AND REPORTING**

- 6.1. All accidents shall be investigated by the subcontractor and reviewed by the general contractor's superintendent.
- 6.2. The subcontractor will prepare a written report on all accidents to be turned in to the superintendent within 24 hours. Report forms shall be provided by the subcontractor or the general contractor's superintendent. A copy of this report will be forwarded to the general contractor's main office. In all cases other than first aid, the form provided by the state shall be completed. The copy retained at the jobsite shall note the action taken to prevent a recurrence. The general contractor's superintendent is to be furnished copies.

## **7. PROTECTIVE EQUIPMENT (PPE)**

- 7.1. The protective equipment to be furnished by the subcontractor to his employees shall be determined by the advance analysis of the job and by conditions that occur as the work progresses. However, on all jobs the following protective equipment shall be the minimum:
- 7.2. Eye protection is required for all individuals in active construction areas at all times. Safety goggles or face shields shall be issued to employees who are engaged in chipping, grinding, or performing any operations where they are exposed to eye hazards. Eye Protection must bear the "Z87" stamp;
- 7.3. Welders' hoods and face shields must be worn only by attaching them to hard hats;
- 7.4. Hard hats are to be worn throughout the jobsite, at all times, start to finish of job;
- 7.5. The subcontractor shall require his employees to wear work shoes in good condition;
- 7.6. Life preservers shall be provided and shall be worn by all employees wherever working over water;
- 7.7. The subcontractor is responsible for enforcing the use of PPE worn by its employees; and
- 7.8. Hearing protection shall be worn when work involves or is near abnormal noise levels.
- 7.9. High visibility clothing shall be worn by all individuals in active construction areas at all times.
- 7.10. Work appropriate gloves to be worn at all times when working around or using sharp objects or performing demolition.

**THE FOLLOWING PROGRAM ITEMS ARE NOTED AND LISTED FOR SPECIAL EMPHASIS SINCE THEY USUALLY CREATE THE MOST HAZARDOUS CONDITIONS AND ARE MOST LIKELY TO BE CITED BY OSHA.**

## **8. HOUSEKEEPING**

- 8.1. Plastic bottles, scraps, paper cups and similar rubbish shall be placed by subcontractor's employees in trash containers for that purpose. No glass containers onsite.
- 8.2. Rubbish, debris and waste materials shall be removed from the work area daily by subcontractor's employees. Form and scrap lumber with protruding nails shall be kept clear from all work areas.
- 8.3. Stairways, ladders, ramps, platforms, walkways and work areas shall be kept clear and clean of loose material and trash by subcontractor's employees.
- 8.4. All material, equipment, etc. must be kept back from the outer edge of a building a minimum of ten feet (10'-0") at building perimeter and a minimum of six feet (6'-0") at interior floor openings.
- 8.5. No smoking onsite except in designated areas (to be determined by job team but never in enclosed spaces or around combustibles).

## **9. SCAFFOLDS**

- 9.1. All scaffolding shall be erected by a competent person. All scaffolding shall be thoroughly checked by the subcontractor's competent person before and after erection and at least daily while in use. All scaffolding must conform to OSHA standards.
- 9.2. All scaffolding over ten feet (10'-0") in height shall be equipped with guard rails and toeboards. Guard rails must support a 200-pound thrust.
- 9.3. All scaffolding, other than suspended scaffolding, shall be erected on firm level foundations and shall be braced or guyed to the structure.
- 9.4. Planking shall have at least twelve inches (12") of overlap and extend six inches (6") beyond center of support or be cleated at both ends to prevent sliding off supports. Planking shall be 2 x 10 nominal lumber or greater.
- 9.5. Access ladders permanently secured shall be provided on all scaffolding.
- 9.6. All scaffolding shall have proper access.

- 9.7. Do not ride rolling scaffolds, and remove all material from the platform before moving the scaffold.
- 9.8. Workers on a swinging scaffold shall be tied off to the building with a full body harness with an independent life line and guardrails. There shall be a safety life line for each person.

## **10. LADDERS**

- 10.1. All ladders shall be inspected at least weekly. Broken and or damaged ladders shall be removed from service immediately and destroyed. All ladders must conform to OSHA standards.
- 10.2. All straight ladders shall be set on firm level foundations at a four (4) to one (1) pitch, have clear access at top and bottom, extend the landing a minimum of thirty-six inches (36") and be secured against movement while in use. All ladders shall be secured top and bottom. Safety feet will be used on all straight ladders.
- 10.3. Portable metal ladders shall not be used for electrical work or where they might contact electrical conductors.
- 10.4. Single portable ladders over twenty-four feet (24'-0") in length shall not be used.
- 10.5. A double-gang ladder or two (2) single-gang ladders must be available when twenty-five (25) or more workers must access each elevated working surface above ground level.
- 10.6. A Frame ladders taller than 12 feet are not permitted onsite, and A Frame ladders made of wood, aluminum, or other conductive materials are not permitted onsite.

## **11. FLOOR OPENINGS AND STAIRWAYS**

- 11.1. At all unprotected floor openings and stairways, provisions shall be made by the general contractor for barriers and toe boards. These shall remain in place until the openings have been closed or permanent stairs installed. When subcontractors must remove such barriers in the performance of their work, they are responsible for replacing barriers so as to provide maximum protection at all times.
- 11.2. Never, under any circumstance, cover a floor opening with a piece of plywood, sheetrock, or other unsuitable material. All floor coverings must support a minimum of 500 lbs. or twice their intended load; whichever is greater. All floor openings must be marked with the word "Hole" or "Cover" and fully secured.

## **12. FIRE PROTECTION**

- 12.1. Gasoline or other flammable liquids shall be stored in UL approved safety containers and properly labeled. No plastic gas cans are allowed on the jobsite.
- 12.2. Approved heating devices, stove pipes, etc. shall be properly insulated to prevent setting fire to adjacent structures.
- 12.3. Fire extinguishers shall be selected by the subcontractor on the basis of type of fire anticipated. Extinguishers, fire barrels, sand pails, hose lines, etc. shall be located where they are readily accessible and easily visible.
- 12.4. Do not smoke or use an open flame, exposed heating element or any other sources of ignition in areas or rooms where spray painting is done.
- 12.5. A fire extinguisher shall be adjacent to all stairwells and within reasonable of travel distance at all times.
- 12.6. Consult Contractor's Project Safety Manual for special fire protection standards, including without limitation, hot work permits, fire watch requirements, and restrictions on flammable material storage.

### **13. POWER TOOLS**

- 13.1. Provisions shall be made on each jobsite for the grounding of all fixed and portable electrical tools and equipment.
- 13.2. It shall be the responsibility of the subcontractor to ascertain that all power saws and grinders in use are provided with the proper guards.
- 13.3. Power saws shall be operated only by authorized and qualified personnel.
- 13.4. All cords to be at a minimum 14-3 with heavy duty rating, no 16 gauge or flat cords
- 13.5. Where feasible and practical, cords should not be exposed to vehicular or heavy foot traffic, reasonable steps should be taken to elevate cords at least 7 feet from the ground in areas such as aisles, stairs, walkways, and other areas of heavy foot traffic
- 13.6. Faulty electrical cords shall be removed from service and destroyed immediately.

### **14. POWDER ACTUATED TOOLS**

- 14.1. Low velocity pistol type tools with a pistol grip shall be used in all cases where applicable.
- 14.2. High velocity tools shall be used only for those applications where low velocity tools will not meet job requirements. When a high velocity tool is no longer required, it shall be removed from the jobsite.
- 14.3. Powder actuated tools shall be used, operated, repaired, serviced, and handled only by authorized personnel who have been trained and certified by the manufacturer and workers must carry the certified "card". Tools will be tested daily and all defects corrected before use.
- 14.4. Tools shall not be loaded until immediately before use. Loaded tools shall not be left unattended.

### **15. TRENCHES**

- 15.1. The subcontractor shall have an "excavation competent person" onsite during excavation operations.
- 15.2. The sides of trenches five feet (5'-0") or more in depth entered by personnel shall be sloped 1½ :1 (depending upon soil type), shielded, or shored.
- 15.3. Ladders that extend at least three feet (3'-0") above the edge of the trench shall be located as to require no more than twenty-five feet (25'-0") lateral travel for rapid exit in case of emergency.
- 15.4. All equipment and spoils should be kept a minimum of two feet (2'-0") from the top of slope.

### **16. FALL PROTECTION**

- 16.1. The subcontractor shall have a "fall protection competent person" onsite during operations, involving fall hazards.
- 16.2. Where employees are exposed to falling six feet (6'-0") or more from an unprotected side or edge, the employer must select and use a guardrail system, safety net system, or a personal fall arrest system to protect the worker from falls.
- 16.3. All employees exposed to any fall hazard, shall be trained in fall protection hazards.
- 16.4. A Fall Protection Policy or Fall Protection Plan (where applicable) shall be maintained on the jobsite.
- 16.5. Steel erectors shall follow OSHA guidelines.

## **17. JOBSITE SAFETY RULES**

- 17.1. Access to this site is restricted to employees and those authorized by Contractor.
- 17.2. Use or possession of intoxicants, alcohol or drugs are strictly prohibited.
- 17.3. Hard hats shall be worn by all employees and visitors at all times.
- 17.4. Hard soled shoes are required. No tennis shoes, sneakers or open toed shoes are permitted except while on roofs with no foot injury hazards present.
- 17.5. Long pants and shirts with four inch (4") minimum sleeves are required at all times.
- 17.6. Eye protection, ear protection and respiratory protection devices will be worn when required.
- 17.7. Full body harness, shock-absorbing lanyards, or other fall protection measures will be utilized when working at unprotected heights.
- 17.8. No glass containers allowed onsite.
- 17.9. No radios, tape decks, or earphones allowed onsite.
- 17.10. Only authorized personnel are permitted to operate equipment or vehicles.
- 17.11. All machinery must have operable backup alarms at all times.
- 17.12. No riders on machinery or equipment. Seat belt use is required at all times. No riding in back of pick-up bed.
- 17.13. Be alert for chemical safety hazards on the jobsite

## **18. SILICA**

- 18.1. Dust control measures (engineering or other controls) are to be implemented for all silica and dust-generating operations whenever possible. This includes wet cutting, vacuum attachments for tools, fans as long as the fan does not blow the dust towards any other workers, etc.
- 18.2. NIOSH approved respiratory protection which adequately protects the employee from the hazards of silica will also be required unless the subcontractor provides air monitoring results that have been reviewed by a Certified Industrial Hygienist (CIH) that show for the specific task and material that there is no over exposure to silica.
- 18.3. The subcontractor must have a written respiratory protection program that meets OSHA requirements. This program must address the proper selection of respirators for the exposure and task, medical evaluation of anyone wearing a respirator, fit testing for the type of respirator to be used, training and education, use and replacement/maintenance of respirators.

## **19. ADDITIONAL PROVISIONS APPLICABLE ON CCIP PROJECTS**

Notwithstanding anything to the contrary, the following provisions shall apply if the Project is enrolled in a Contractor's Controlled Insurance Program ("CCIP").

- 19.1. Where employees are exposed to falling six feet (6'-0") or more from an unprotected side or edge (including, without limitation, steel erection activities, scaffold use/erection/dismantling, and roofing activities), the employer must select and use a guardrail system, safety net system, personal fall arrest system, or other fall protection to protect the worker from falls.
- 19.2. Subcontractor shall utilize a return to work program, as approved by Contractor, that shall include provisions to accommodate restricted duty for work-related injuries and illnesses.
- 19.3. Subcontractor hereby represents and warrants that: it utilizes pre-employment, reasonable suspicion, probable cause, and post-accident drug testing for all of its employees; all employees performing work for it at the Project site will have been drug tested at some time by the undersigned subcontractor prior thereto; no employee performing work for it at the Project site will have at any time tested positive for a substance prohibited by law or under the undersigned subcontractor's drug testing program; and that it shall require the same of any of its permissible subcontractors performing work at the Project site.



# EXHIBIT D

## REQUEST FOR CHANGE ORDER

\_\_\_\_\_ (PROJECT)

\_\_\_\_\_ (SUBCONTRACTOR NAME)

CHANGE DESCRIPTION:

---

---

COST: (Attach any takeoffs, quantities, unit prices, quotes, etc. used in preparing this recap).

FIELD DESCRIPTION	LABOR	MATERIAL	SUB/VENDOR	TOTAL
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
SUBTOTAL				\$ _____
SUBCONTRACTOR/BOND COST _____% (IF APPLICABLE)				\$ _____
SUBTOTAL				\$ _____
SUBCONTRACTOR/VENDOR OVERHEAD & PROFIT (_____% ) (per contract)				\$ _____
TOTAL COST TO NEW SOUTH CONSTRUCTION COMPANY				\$ _____

PLEASE NOTE ANY ITEMS RELATED TO YOUR SCOPE AND THIS CHANGE WHICH YOU HAVE NOT INCLUDED:

ASSUMING 14 CALENDAR DAYS FOR APPROVAL OF THIS CHANGE ORDER REQUEST SPECIFICALLY NOTE ANY IMPACT TO YOUR CURRENT SCHEDULE:

---

---

\_\_\_\_\_  
(SUBCONTRACTOR NAME)

\_\_\_\_\_  
SIGNED / DATE

NOTE: IN THE EVENT YOU REQUIRE ADDITIONAL SPACE TO PROPERLY RECAP THIS CHANGE, PLEASE EXPAND THIS FORMAT.

# EXHIBIT E CHANGE ORDER FORM

---

(PROJECT NAME)                      Project # \_\_\_\_\_                      New South Construction Company

---

**Date:** \_\_\_\_\_

**To Subcontractor/Vendor:** \_\_\_\_\_

**Project Description:** \_\_\_\_\_

**Contract Date:** \_\_\_\_\_

**Contract Number:** \_\_\_\_\_

**Change Order Number:** \_\_\_\_\_

---

(name and address)

Subject to the execution by both parties, the Agreement between New South Construction Company ('Contractor') and Subcontractor is hereby revised solely as follows:

PCO	Item #	Description	Amount
-----	--------	-------------	--------

The items and amounts set forth on this Change Order, together with any prior changes, constitutes full and complete changes for all material, labor, and supplies, equipment, delays, other impacts, goods, services and costs of any kind supplied by the Subcontractor to the Project, through and including the date of this Change Order. Subcontractor further agrees that all requests for change orders, field work orders or other claims for additional compensation and/or additional time, have been resolved to the satisfaction of both Contractor and Subcontractor, unless expressly set forth below.

[NOTE ANY ITEMS RELATED TO YOUR SCOPE AND THIS CHANGE WHICH YOU HAVE NOT INCLUDED]

ORIGINAL SUBCONTRACT VALUE:..... \$0.00

SUM OF CHANGES BY PRIOR CHANGE ORDERS:..... \$0.00

SUBCONTRACT VALUE PRIOR TO THIS CHANGE ORDER:.....\$0.00

SUBCONTRACT VALUE WILL BE CHANGED BY THIS CHANGE ORDER IN THE AMOUNT OF:.....\$0.00

NEW SUBCONTRACT VALUE INCLUDING THIS CHANGE ORDER IS:..... \$0.00

THE SUBCONTRACT DURATION WILL BE CHANGED BY:..... 0 days

REVISED SUBCONTRACT COMPLETION DATE IS:.....

By signing below, the Subcontractor swears and affirms that the above-referenced terms and conditions are accurate and acceptable and the amounts sought are the reasonable value and required time for items referenced above.

New South Construction Company	(subcontractor name)
<b>CONTRACTOR</b>	<b>SUBCONTRACTOR/VENDOR</b>
1180 West Peachtree Street, Suite 700 Atlanta, GA 30309	(address)

BY	BY
SIGNATURE	SIGNATURE
DATE	DATE

**This document shall be considered a Request for Change Order and does not constitute a modification to the original Subcontract unless and until executed by Contractor and Subcontractor with an original returned to Contractor.**

# EXHIBIT F

## SUBCONTRACTOR IMMIGRATION COMPLIANCE DOCUMENTS SUBCONTRACTOR E-VERIFY

MSA #:

The undersigned Subcontractor, swears, affirms, and verifies its compliance with the Immigration Laws as defined in Article 26 of its MSA with New South Construction Company LLC and states affirmatively that the individual, firm or corporation that is engaged in the physical performance of services under such MSA has registered with and is participating in U.S. Citizenship and Immigration Services E-Verify program ("E-Verify"). Furthermore, Subcontractor will continue to use the E-Verify throughout the term of the MSA.

Additionally, by executing below, the undersigned subcontractor verifies that the name, address, user identification number, date of authorization to use E-Verify is truly and accurately set forth herein.

\_\_\_\_\_  
E-Verify User Identification Number

\_\_\_\_\_  
Date of authorization to use E-Verify

Subcontractor Full Legal Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State and Zip Code: \_\_\_\_\_

\_\_\_\_\_  
BY: Authorized Officer of Subcontractor

\_\_\_\_\_  
Title of Authorized Officer of Subcontractor

\_\_\_\_\_  
Printed Name of Authorized Officer

\_\_\_\_\_  
Date

# **EXHIBIT G**

## **BOND FORMS**

### **Subcontractor Payment Bond**

KNOWN BY ALL PEOPLE THESE PRESENTS, THAT \_\_\_\_\_ (**SUBCONTRACTOR NAME**) located at \_\_\_\_\_ (**ADDRESS**) ("**Principal**") and \_\_\_\_\_ (**SURETY NAME**), a corporation existing under the laws of the State of \_\_\_\_\_ (**SURETY STATE OF INCORPORATION**) ("**Surety**", as Surety, are held and firmly bound unto New South Construction Company ("**Obligee**"), in the amount of \_\_\_\_\_, plus any increase in the amount of the Subcontract Sum, for the payment of which amounts will and truly be made, Principal and Surety bind themselves and their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Obligee has been awarded a contract ("**Prime Contract**") by \_\_\_\_\_ (**OWNER**) for \_\_\_\_\_ (**PROJECT NAME**) and;

WHEREAS, Principal has entered into a Subcontract with Obligee ("**Subcontract**", dated \_\_\_\_\_ (**SUBCONTRACT DATE**) to perform, as Subcontractor, certain portions of the work in connection with Prime Contract, consisting of but not limited to \_\_\_\_\_ (**GENERAL DESCRIPTION OF WORK, E.G. ELECTRICAL, MECHANICAL, ETC.**), which Subcontract is hereby referred to and made a part hereof.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal shall promptly make payment to all persons, entities, and/or others supplying labor and/or material in the prosecution of Principal's work, as provided for in said Subcontract and any and all modifications of said Subcontract that may hereafter be made, and all insurance premiums, both compensation and all other kinds of insurance on or relating to said work, and shall prevent any lien from being filed against the premises and prevent any claims against any bond supplied by Obligee by reason of the furnishing of any of the foregoing and shall discharge any lien or bond claim so filed or made within ten (10) days from filing or notice thereof (or else defend same in the name of Obligee and at the cost, risk, and expense of principal and Surety) and shall pay all costs, fees, and expenses relating to any such lien or bond claim, whether filed or not, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Surety agrees that no change, extension of time, alteration, addition, omission, or other modification of the terms of either the Subcontract or Prime Contract, or both, or in the said work to be performed, or in the specifications, or in the plan, or in any aspect of the parties relationship relating to the Project shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such changes, extensions of time, alterations, additions, omissions, and other modifications. Furthermore, notwithstanding anything to the contrary, Principal's obligations under this Bond shall include but not be limited to any and all labor or materials through, directly or indirectly for the benefit of, ordered by, or otherwise required in any way to complete Principal's scope of work and/or other obligations under the Subcontract, whether purchased and/or paid for by Principal, Obligee, or the Project Owner, or other party.

Principal and Surety agree that this Bond shall inure to the benefit of all persons supplying labor and/or material in the prosecution of the work of Principal, as provided for in Subcontract, as amended and modified from time to time, as well as to Obligee, and that such persons and/or entities may maintain independent actions upon this Bond in their own names.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

ATTEST:

By: \_\_\_\_\_  
(WITNESS TO PRINCIPAL'S SIGNATURE)

ATTEST:

By: \_\_\_\_\_  
(WITNESS TO PRINCIPAL'S SIGNATURE)

Note: Attach Power of Attorney and Surety Financial Statement

**PRINCIPAL:**

\_\_\_\_\_  
**(SUBCONTRACTOR NAME)** (SEAL)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SURETY:**

\_\_\_\_\_  
(SEAL)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Attorney-in-Fact

## Subcontractor Performance Bond

KNOWN BY ALL PEOPLE THESE PRESENTS, THAT \_\_\_\_\_ (SUBCONTRACTOR NAME) located at \_\_\_\_\_ (ADDRESS) ("Principal") and \_\_\_\_\_ (SURETY NAME), a corporation existing under the laws of the State of \_\_\_\_\_ (SURETY STATE OF INCORPORATION) ("Surety"), as Surety, are held and firmly bound unto New South Construction Company ("Obligee"), in the amount of \_\_\_\_\_, plus any increase in the amount of the Subcontract Sum, for the payment of which amounts will and truly be made, Principal and Surety bind themselves and their respective heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Obligee has been awarded a contract ("Prime Contract") by \_\_\_\_\_ (OWNER) for \_\_\_\_\_ (PROJECT NAME) and;

WHEREAS, Principal has entered into a Subcontract with Obligee ("Subcontract"), dated \_\_\_\_\_ (SUBCONTRACT DATE) to perform, as Subcontractor, certain portions of the work in connection with Prime Contract, consisting of but not limited to \_\_\_\_\_ (GENERAL DESCRIPTION OF WORK, E.G. ELECTRICAL, MECHANICAL, ETC.), which Subcontract is hereby referred to and made a part hereof.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal shall well and truly perform all the undertakings, covenants, terms, conditions, and agreements of Subcontract within the time provided therein and any extensions thereof that may be granted by Obligee, and during the life of any guaranty or warranty required under Subcontract, and shall also well and truly perform all of the undertakings, covenants, terms, conditions, and agreements of any and all modifications of Subcontract that may hereafter be made, and shall indemnify and save harmless Obligee of and from any and all loss, damage, and expense, including costs and attorneys' fees that Obligee may sustain by reason of failure so to do, then this obligation shall be null and void; otherwise it shall remain in full force and effect. Notwithstanding anything to the contrary, Principal's obligations under this Bond shall include but not be limited to any and all labor or materials through, directly or indirectly for the benefit of, ordered by, or otherwise required in any way to complete Principal's scope of work and/or other obligations under the Subcontract, whether purchased and/or paid for by Principal, Obligee, the Project Owner, or other party.

Whenever Principal shall be, and declared by Obligee to be in default under the Subcontract, the Obligee having performed Obligee's obligation thereunder:

- (1) Surety may promptly, but in no event more than fourteen (14) days thereafter, remedy the default subject to the provisions of paragraph (3) below;
- (2) Obligee after reasonable notice (which shall be deemed to be at least fourteen (14) days' notice) to Surety may, or upon demand of Obligee may arrange for the performance of Principal's obligations under Subcontract subject to the provisions of paragraph (3) below;
- (3) The balance of the Subcontract Sum, as defined in Subcontract, shall be credited against the cost of completing performance of Subcontract. If completed by Obligee and the cost exceeds the balance of the Subcontract Sum, Surety shall pay to Obligee such excess, but in no event shall the aggregate liability of Surety exceed the amount on this Bond. If Surety arranges completion or remedies the default, that portion of the balance of the Subcontract Sum as may be required to complete Subcontract or remedy the default and to reimburse Surety for its outlays shall be paid to Surety at the times and in the manner as said sums would have been payable to Principal. The balance of the Subcontract Sum shall be the Subcontract Sum, as determined and modified under Subcontract, less amounts paid by Obligee under Subcontract.

Surety agrees that no change, extension of time, alteration, addition, omission, or other modification of the terms of either the Subcontract or Prime Contract, or both, or in the said work to be performed, or in the specifications, or in the plan, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such changes, extensions of time, alterations, additions, omissions, and other modifications.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

ATTEST:

By: \_\_\_\_\_  
(WITNESS TO PRINCIPAL'S SIGNATURE)

ATTEST:

By: \_\_\_\_\_  
(WITNESS TO PRINCIPAL'S SIGNATURE)

Note: Attach Power of Attorney and Surety Financial Statement

**PRINCIPAL:**

\_\_\_\_\_ **(SUBCONTRACTOR NAME)** (SEAL)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SURETY:**

\_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Attorney-in-Fact

**EXHIBIT H**  
**ELECTRONIC FUNDS TRANSFER AUTHORIZATION**

*All requests will be verified via phone call.*

Vendor Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Bank Name \_\_\_\_\_  
Bank Address \_\_\_\_\_  
Account Name \_\_\_\_\_  
Routing Number \_\_\_\_\_  
Account Number \_\_\_\_\_

**I authorize you and the banking institution listed above to deposit funds electronically into this account. If deposited funds are not entitled to this account, I authorize you to direct the banking institution to return said funds. This authority will remain in effect until I have cancelled it in writing.**

\_\_\_\_\_  
Print Name of Authorized Person

\_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Complete the following for EFT Remittance Notification:

Contact Name \_\_\_\_\_

Contact Phone \_\_\_\_\_

Contact Email \_\_\_\_\_

**Please return the form via email to [accounting@newsouthconstruction.com](mailto:accounting@newsouthconstruction.com)**