



Appendix 3 - Subcontract Standard Conditions

MARCH 2023

SUBCONTRACT NUMBER:

1. PERFORMANCE OF WORK.

(A) The Subcontractor shall perform and furnish all the work, labor, services, materials, supplies, equipment, tools, appliances, scaffolds, and other things necessary for completion of the scope of work included in this Subcontract, as more particularly described in Appendix 5 (hereinafter called the "Work"). The Work shall be performed in accordance with all provisions of the plans, specifications, general conditions, special conditions referred to herein, and pursuant to the terms of this Subcontract. The Subcontractor shall also complete its Work in strict accordance with the terms and provisions of the contract (hereinafter "Prime Contract") between Contractor and the Principal and/or Owner and in accordance with all plans and specifications referred to therein. The plans, specifications, general conditions, special conditions, addenda, the Subcontract and the Prime Contract have been made available to the Subcontractor and have been reviewed by the Subcontractor. All of the aforesaid documents, including this Subcontract, are hereinafter referred to as the "Contract Documents". The Subcontractor agrees that it has reviewed this Agreement and the other Contract Documents and has not relied upon statements or representations of the Contractor, the Principal and/or the Owner in entering into this Subcontract.

(B) With respect to the Work provided hereunder, Subcontractor agrees that all of the Contract Documents, including the Prime Contract, shall be deemed to be incorporated herein by reference and made a part hereof, and the Subcontractor agrees to be bound to Contractor by all of the terms and provisions thereof in the same way to which Contractor is bound to Owner. To the extent the terms relate in any way to the Work or Subcontractor's obligations under this Agreement, Subcontractor agrees further that the Contractor shall have the same rights and remedies against the Subcontractor as the Owner and/or Principal has against the Contractor under the terms of the Prime Contract and the other Contract Documents. The terms of the Contract Documents apply with same force and effect as though each and every such duty, obligation, responsibility, right or remedy were set forth herein in full. The Subcontractor warrants and guarantees that it has examined and reviewed the Contract Documents to his satisfaction and understands and accepts the requirements therein.

2. COMMENCEMENT AND COMPLETION OF WORK.

TIME IS OF THE ESSENCE FOR THIS SUBCONTRACT AND TIMELY PERFORMANCE OF THE WORK IS A CRITICAL REQUIREMENT OF THIS SUBCONTRACT. The Subcontractor further hereby agrees that:

(A) In accordance with the mutually agreed upon schedule, the Subcontractor will commence in the field the Subcontract Work to be done hereunder at such points as the Contractor may designate, and will continue diligently in the performance thereof in accordance with the Contract Documents and the Project Schedule, including revisions thereto, to the satisfaction of the Contractor, Principal and/or Owner and the Architect/Engineer so as to not delay the progress of any work required by this Subcontract and with due consideration that other work is dependent upon the Work of this Agreement for project completion.

(B) The Subcontractor acknowledges that it is familiar with and understands the Project Schedule and agrees that Subcontractor will carry on its Work in a manner that will not cause delay in the progress of the work on the Project.

(C) The Subcontractor further warrants and guarantees that the Subcontract Price herein includes any costs and expenses required to comply with the Project Schedule, including revisions thereto, and all expenses or costs incurred in doing so, including, without limitation, mobilizing and demobilizing its forces more than once, working overtime or multiple shifts, night work, working in adverse weather, and adding people or equipment, or otherwise. Any such expenses or costs shall be the sole responsibility of the Subcontractor, and the Subcontractor will not be entitled to any payments in excess of the Subcontract Price.

(D) Subcontractor shall at all times supply adequate tools, appliances, and equipment, and shall also at all times supply and promptly pay for a sufficient number of properly skilled workmen and a sufficient amount of materials and supplies of proper quality to efficiently and properly prosecute the said Work in accordance with the Project Schedule, and any modifications thereto.

(E) If Subcontractor falls behind in the progress of the Work or otherwise fails to perform in accord with the Contract Documents or Project Schedule, Contractor may, upon notice to Subcontractor and failure to cure within forty-eight (48) hours, issue a deductive change order, supplement Subcontractor's labor force, take over the Work, or otherwise direct Subcontractor to take such steps as Contractor in its sole discretion deems necessary to improve the rate of progress, including requiring Subcontractor to increase the labor force, number of shifts and/or overtime operations, days of work, amount of equipment or other remedies, without any cost to Contractor or Owner, and with such costs and expenses to be borne solely by the Subcontractor.

(F) The Contractor shall have the right, at its option and within its sole discretion, to perform, without prior notice to or consent from Subcontractor, any work deemed necessary by the Contractor, Principal and/or Owner and Architect/Engineer to establish and/or maintain the safety of its workmen, the Subcontractor's workmen and the general public, including without limitation, Work covered by this Subcontract, and to charge the Subcontractor for all costs resulting from and relating to the performance of such work by or on behalf of the Contractor.

(G) If the Prime Contract provides for liquidated or other damages for delay beyond the completion date set forth in the Subcontract, and such damages are assessed, the Contractor may assess a share of the damages against the Subcontractor in proportion to the Subcontractor's share of the responsibility for the delay. However, the amount of such assessment shall not exceed the amount assessed against the Contractor. This shall not limit the Subcontractor's liability to the Contractor for the Contractor's actual delay damages caused by the Subcontractor's delay.

(H) Should the progress of the Work be delayed, disrupted or interfered with by any fault or neglect or act or failure to act on the part of the Subcontractor or any of its officers, agents, servants, employees, subcontractors and suppliers so as to cause any additional cost, expense, liability or damage to Contractor and/or the Owner, the Subcontractor hereby agrees to pay Contractor and/or the Owner for and indemnify them against all such cost, expenses, damages, liabilities, including attorneys' fees incurred.

3. CHANGES IN THE CONTRACT DOCUMENTS.

(A) It is understood and agreed that: (i) the Contractor is not an insurer or guarantor of the Subcontract Work, the Contract Documents concerning same, or of any part thereof, or of the performance by the Principal and/or Owner of the Prime Contract, as specified therein or otherwise, and (ii) the Subcontractor shall be bound by any changes or alterations made by the Principal and/or Owner or the Architect/Engineer in the Contract Documents, including without limitation, the plans and/or specifications in the Contract Documents affecting the Subcontract Work hereunder, or in the amount or character of said Subcontract Work or any part thereof, to the same extent that the Contractor is bound thereby. The Subcontractor's recovery due to changes in the Contract Documents is limited to any increase in the

4. LIABILITY OF SUBCONTRACTOR.

(A) To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless the Contractor, Principal and/or Owner, the Architect/Engineer, and any other person or entity which is identified as an indemnitee of the Contractor within the Contract Documents (the "Indemnified Parties"), as well as all of their respective agents and employees, heirs, successors, and assigns from all damages, losses, claims, demands, suits, penalties and expenses, including reasonable attorneys' fees, (collectively, "Liability") arising out of or resulting from the Subcontractor's failure to comply with this Subcontract, Subcontractor's performance of the Work and/or Subcontractor's acts or omissions in the performance of any part of the Work. This indemnity shall be effective whether the Work, act, or omission is done by Subcontractor's employees, subcontractors, consultants, designers, laborers, or materialmen. This indemnity shall extend to, but is not limited to, claims or damages for property damage, bodily injury, sickness, death, damage to or loss of tangible property, and accidents or occurrences arising from the Subcontractor's furnishing and/or storing of materials. The full and faithful performance of the Subcontractor's indemnification obligations is an express condition precedent to the Subcontractor's right to receive payment in whole or in part of the Subcontract Price. The Contractor's indemnity rights granted by this Subcontract are in addition to all other remedies to which the Contractor is entitled by this Subcontract, by the Contract Documents, or by law. Notwithstanding the foregoing, however, the Subcontractor shall not be obligated to indemnify the Indemnified Parties to the extent such Liability is caused, in whole or in part, by the negligence or willful misconduct of one or more of the Indemnified Parties.

(B) The Contractor may, at its sole discretion, withhold from any payment otherwise due under this Subcontract such amounts as Contractor believes are necessary to protect it against damages covered by this section or which amounts Contractor believes will be necessary to complete or remediate the Work.

(C) The indemnity obligations of this Section further apply to Liability associated with actual or asserted infringement of any patents, copyrights, misappropriation of trade secrets, or proprietary information arising out of the use or sale of any materials, equipment, designs, or other things furnished by the Subcontractor hereunder.

(D) The Subcontractor's indemnification obligations hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or

8. SUBLETTING AND ASSIGNMENT.

The Subcontract Work shall be performed by the Subcontractor with the assistance of workmen under his immediate superintendents, and neither the Subcontract Work nor any portion thereof shall be sublet, assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of the Contractor. Any sub-subcontract expressly consented to by the Contractor shall incorporate by reference this Subcontract and the underlying Contract Documents. All sub-subcontractors shall furnish the bonds and insurance required by this Subcontract. The Contractor shall be named as additional insured under each of the required insurance policies and Subcontractor shall furnish evidence of the above as required by this Subcontract. The Subcontractor shall not sell, assign or otherwise dispose of any monies earned or to be earned under this Subcontract without the prior written consent of the Contractor.

9. OTHER SUBCONTRACTORS AND CONTRACTORS.

The Subcontractor shall cooperate fully with the Contractor and other subcontractors and contractors employed, either directly or indirectly, by the Principal and/or Owner and working on-site, in accordance with the Prime Contract and Contract Documents. The Subcontractor shall so plan and conduct the Subcontract Work to be performed hereunder as not to interfere with the operations of the Contractor or such other subcontractors and contractors as required by the Prime Contract. The Contractor will not be responsible for any delays or interference resulting from the acts or operations of other subcontractors or contractors employed by the Principal and/or Owner.

10. SETTLEMENT OF DISPUTES.

(A)(1) In case of any claim, controversy, or dispute between the Contractor and the Subcontractor INVOLVING THE PRINCIPAL AND/OR OWNER, the Subcontractor agrees to be bound to the Contractor to the same extent that the Contractor is bound to the Principal and/or Owner by the terms of the Contract Documents, including the notice provisions therein, and by any and all preliminary and final decisions or determinations made thereunder by the party, board or court so authorized in the Contract Documents or by law, whether or not the Subcontractor is a party to such proceedings. In case of such dispute, the Subcontractor will comply with all provisions of the Contract Documents, allowing a reasonable time for the Contractor to analyze and forward to the Principal and/or Owner any

19. TERMINATION FOR CONVENIENCE.

The Subcontractor agrees that the Contractor shall have the right to terminate this Subcontract for any reason whatsoever by providing the Subcontractor with a notice of termination, to be effective forty-eight (48) hours following receipt by the Subcontractor of such notice, to be sent by hand delivery or registered or certified mail, return receipt requested. A termination for default under other provisions of this Subcontract shall, if made in error, be treated as a termination for convenience under this clause.

Whenever the Subcontractor is terminated for convenience under this clause, or is wrongfully terminated under any other clause of this Subcontract, the Subcontractor shall only be entitled to one of the following two options, at the sole discretion of Contractor: (1) the actual direct costs of all labor, material and subcontractors expended by the Subcontractor, plus profit and overhead not to exceed twelve percent (12%) of the foregoing, plus the cost of equipment (including profit and overhead) which will be limited to seventy-five percent (75%) of the applicable rates shown in the "Rental Rates & Specifications" compiled by the Associated Equipment Distributors current at the time the equipment was used, pursuant to the Subcontractor's obligations under this Subcontract prior to the effective date of the termination, or (2) payment for work actually provided in accordance with the terms of this Subcontract. In no event shall Subcontractor be entitled to recover lost profits or sums for work not provided.

In no event shall the Subcontractor be entitled to assert a claim in quantum meruit or any other measure of damages other than that stated herein. In the event of a disagreement as to the amount due the Subcontractor upon such termination, the dispute shall be decided in accordance with Section 10 of these Subcontract Standard Conditions.

20. BREACH OF OTHER CONTRACTS.

Should there be a breach by the Subcontractor of one or more other contracts now or hereafter existing between the Contractor and the Subcontractor, or with any affiliated person, firm or corporation of the Subcontractor concerning this or any other contract, such a breach by the Subcontractor shall, at the option of the Contractor, be considered a breach of all contracts and, in that event, the Contractor may terminate any or all of the contracts so breached, or may withhold monies due or to become due the Subcontractor on any such contracts, and apply the same towards payment of any damages suffered by the Contractor on that or any other contracts.

21. SAFETY. The Subcontractor accepts complete responsibility for the health and safety of its employees.

(A)(1) The Subcontractor is solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Subcontract Work. The Subcontractor shall take actions to prevent injury, loss or damage to persons or property located on or adjacent to the Subcontract Work. The Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by the Contractor and Principal and/or Owner, including, but not limited to, requirements imposed by the Subcontract and the Prime Contract.

(A)(2) The Subcontractor shall give prompt written notice to the Contractor of any accident involving bodily injury, any property damage, or any occurrence that could have resulted in serious bodily injury, whether or not such an injury was sustained

(A)(3) In the event that the Subcontractor or any of its employees, subcontractors, or agents fail to comply with any health and safety requirements contained herein or if the Contractor deems any part of the Subcontract Work unsafe, the Contractor may require the Subcontractor to stop work and/or remove any noncompliant employees, subcontractors, or agents.

(A)(4) Should the Subcontractor fail to comply with the above or to maintain his work area and equipment in a safe operating condition and/or should the Subcontractor's operation be characterized by frequent injuries to workmen, then at the option of the Contractor, this Subcontract may, upon written notice to the Subcontractor, be canceled and the Subcontract Work may be completed by the Contractor in accordance with Section XIV of these Subcontract Standard Conditions without liability to the Contractor or prejudice to any of its legal or equitable rights hereunder, and the Subcontractor shall be required to immediately remove his equipment and employees, subcontractors and agents from the site of Subcontract Work, if so directed by the Contractor.

(B) SUBSTANCE ABUSE: The Subcontractor shall advise its employees, the employees of its subcontractors, and agents that the Contractor is committed to make every effort to institute and maintain a safe, drug and alcohol free workplace. In connection with such, the Subcontractor agrees that its substance abuse program will minimally consist of pre-employment, for cause and post-accident testing procedures that are in compliance with statutes and regulations governing the administration of such test. The Subcontractor agrees that:

(1) When requested, the Subcontractor will provide written documentation that its employees have been properly screened for controlled substances no longer than 30 days prior to commencing work.

23. PAYMENT. (continued from previous page)

the amount of such indebtedness may be deducted from any payment or payments made or to be made under this provision or from any funds due or to become due under any other contract between the Contractor and the Subcontractor. Partial payments shall be paid within thirty (30) days after receipt of payment to the Contractor from the Principal and/or Owner subject to other requirements of this Subcontract.

(B) The Contractor shall have the right to withhold, adjust or reduce any partial payment(s), whether based on unit prices or on payments to the Contractor by the Principal and/or Owner, in order to ensure that the remaining payments (including retainage) due the Subcontractor under this Subcontract will be sufficient to pay any and all costs required to complete the Subcontract Work.

(C) UPON THE COMPLETION OF THE PRIME CONTRACT and payment therefore in full to the Contractor by the Principal and/or Owner, the Subcontractor shall be paid within thirty (30) days thereafter the remaining amount due it under this Subcontract, except that any remaining amount due the Subcontractor may have set-off or applied against it any sums due the Contractor by the Subcontractor under this Subcontract or any other agreement between the Contractor and the Subcontractor or by reason of the breach of either.

(D) All prior partial payments shall be subject to correction in the final payment; provided, that if, on completion of the Subcontract Work by the Subcontractor and prior to the completion of the Prime Contract as a whole, the Subcontractor shall receive full payment for the Subcontract Work according to the computations of the Principal and/or Owner or Architect/Engineer, any changes thereafter made in said computations shall be binding upon the Subcontractor. Final payment to the Subcontractor as herein provided shall release the Contractor from any further obligation whatsoever in respect to this Subcontract. It is an express Condition Precedent for receipt of final payment that the following have been satisfied:

- (1) The completion and acceptance of the Work by the Contractor, the Owner, Principal and/or Architect;
- (2) Upon request, the Subcontractor has provided evidence satisfactory to the Contractor that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or items performed, furnished, or incurred in connection with the work; and
- (3) Receipt of all documents, drawings, manuals, warranties or other items required under the Contract Documents.

(E) The Subcontractor shall, upon request by the Contractor, as a Condition Precedent to his entitlement to receive any progress or final payment, execute and deliver to the Contractor a full and valid release and complete discharge of the Contractor, Architect/Engineer and Principal and/or Owner of and from any and all claims and demands whatsoever for all matters growing out of, or in any manner connected with or founded upon, this Subcontract or the Subcontract Work contemplated hereby, and the Subcontractor shall furnish to the Contractor satisfactory assurances, including sworn affidavits if requested, that all bills for labor, services and materials incurred by him have been paid.

(F) The estimates and calculations made by the Principal and/or Owner and the Architect/Engineer as to the amount of Subcontract Work performed hereunder by the Subcontractor shall be final and binding as between the parties hereto, and shall conclusively establish the amount of work done by the Subcontractor hereunder. It is understood and agreed that the Subcontractor shall receive no compensation for any work done by him which is not approved and accepted by the Principal and/or Owner and the Architect/Engineer; provided, that if the Subcontractor, by written direction of the Contractor, performs any work or furnishes any services, supplies or materials not provided for in the Contract Documents, he shall be paid therefore as provided herein.

(G) PAYMENTS BASED ON UNIT PRICES. If the Subcontract Price is based on unit prices for work, payment to the Subcontractor will be based on the unit prices shown in this Subcontract. All unit prices will include all direct costs, indirect costs, home office overhead, profit and any other costs required to complete the Subcontract Work. If quantities are given, they are subject to change and Subcontractor will be paid as follows: a) If payment by the Principal and/or Owner to the Contractor for work in this Subcontract is based on quantities of work performed, then the Subcontractor will be paid for the same quantity(s) which the Principal and/or Owner pays the Contractor, less any amounts performed by the Contractor or others, or b) if the Contractor is not paid based on quantities of work performed, then the Subcontractor will be paid for actual quantities performed by the Subcontractor and necessary in performance of the Subcontract Work.

The Contractor does not guarantee or warrant the accuracy of anticipated quantities. No adjustment will be made in unit prices for underrun or overrun in quantities unless payment to the Contractor by the Principal and/or Owner is adjusted. In such case, adjustments will be limited to the amount of adjustment given to the Contractor by the Principal and/or Owner.

(H) In consideration of the promises, covenants and agreements of the Subcontractor herein contained, and the full, faithful and prompt performance of this Subcontract and the plans and specifications constituting a part hereof, the Contractor agrees to pay the Subcontract Price to the Subcontractor and the Subcontractor agrees to receive and accept the Subcontract Price as full compensation for doing all Subcontract Work and furnishing all materials, supplies, etc. contemplated and embraced in this Subcontract.

(I) Notwithstanding the above, it shall be a Condition Precedent to any liability of the Contractor to the Subcontractor for progress or final payments for any work performed by the Subcontractor on the Project that the Contractor first be in receipt of payment from the Principal and/or Owner for such work. If the Principal and/or Owner has not paid the Contractor for work performed by the Subcontractor, for whatever reason, the Subcontractor agrees that the Contractor shall not be liable to, or indebted to, the Subcontractor on account of such work. The Subcontractor assumes and accepts the risk that it will not be paid for work performed by it in the event that the Contractor, for whatever reason, is not paid by the Principal and/or Owner for such work, and the SUBCONTRACTOR HEREBY ACKNOWLEDGES THAT IT RELIES PRIMARILY FOR PAYMENT FOR WORK PERFORMED BY IT ON THE CREDIT OF THE PRINCIPAL AND/OR OWNER AND NOT OF THE CONTRACTOR.

(J) Without the prior written consent of the Contractor, rentals paid or incurred for equipment used by the Subcontractor shall not exceed seventy-five percent (75%) of the applicable rates shown in the "Rental Rates & Specifications" compiled by Associated Equipment Distributors current at the time the equipment is used. The Subcontractor shall not purchase materials to be used in the prosecution of the Subcontract Work or in connection therewith in excess of the quantity required. If the Subcontractor does not furnish performance or payment bonds, the Subcontractor shall, upon demand, submit payrolls, purchase orders and rental agreements to the Contractor for approval in advance.

24. APPLICABLE LAW.

This Subcontract shall be interpreted in accordance with the laws of North Carolina, and North Carolina law shall govern any dispute under this Subcontract or between the parties hereto related to the Work. Any dispute hereunder or in connection herewith between the parties hereto shall be instituted, prosecuted, or arbitrated (at the Contractor's sole option, as provided in Section 10 of this Subcontract) in Charlotte, North Carolina, and in the case of litigation, the state court located in Mecklenburg County, North Carolina shall be the sole and exclusive venue for all actions.

25. MISCELLANEOUS PROVISIONS.

(A) The Subcontractor agrees to be bound by and, at its own costs, comply with, all federal, state and local laws, ordinances and regulations (the Laws) applicable to the Subcontract Work, including, but not limited to, any such Laws relating to the health and safety of any person; the environment; hazardous substances; labor and employment; immigration; disadvantage business enterprises; and civil rights and all other Laws with which the Contractor must comply. The Subcontractor

25. MISCELLANEOUS PROVISIONS. (continued from previous page)

(B) The Subcontractor shall be responsible for all payments of taxes, contributions and/or premiums payable on his employees or on his operations under workers' compensation laws, unemployment compensation laws, the federal Social Security Act, health and welfare benefit plans, gross business taxes, sales and use taxes and any other taxes, contributions and/or premiums which become payable by operation of law or contract, including contributions payable by the employees, and shall save the Contractor harmless from all liability, loss and expense resulting from the Subcontractor's failure to comply with all requirements of such laws or contracts. The Subcontractor agrees to comply with all rules and regulations at any time applicable to this provision, including licensing requirements for the location of the Subcontract Work.

(C) The Subcontractor will provide the Contractor with satisfactory proof as may be required by the Contractor showing compliance by the Subcontractor with laws and regulations of the jurisdiction in which the Subcontract Work is performed relating to withholding of income taxes from wages of employees.