



## Master Construction Subcontract

### CONTRACTOR

Brady Trane Service, Inc.  
2025 16th Street  
Greensboro, NC 27405

### SUBCONTRACTOR

Subcontractor's Legal Name: \_\_\_\_\_

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

License Number: \_\_\_\_\_

State Where License Issued: \_\_\_\_\_

Trade: \_\_\_\_\_

This **Master Construction Subcontract** ("Subcontract") is made on these terms and conditions, as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date"), by and between the parties listed above. This Subcontract shall not include any additional or conflicting terms and conditions that may be contained in the Subcontractor's proposal, quotation, invoice or some other form, all of which additional or conflicting terms and conditions are hereby rejected by Contractor. Any such proposal, quotation, or invoice will not be considered a counteroffer, amendment, modification, or other revision to the terms and conditions of this Subcontract. No waiver, alteration or modification of this Subcontract shall be valid, unless made in writing and signed by Contractor.

### RECITALS

**WHEREAS**, Contractor maintains relationships with qualified subcontractors and Contractor desires to utilize Subcontractor to furnish services at one or more sites as defined in a Subcontract Work Order ("Work Order") to be issued pursuant hereto; and

**WHEREAS**, Contractor and Subcontractor have agreed to enter into this Subcontract to set forth the terms and conditions for Subcontractor's services as defined in one or more Work Orders (hereinafter the "Work"). This Subcontract provides the standard terms and conditions that will apply with respect to each Work Order. Work Orders shall be issued pursuant to this Subcontract, in the form identified in Exhibit A, attached hereto. The Work Order will identify the scope of the Work to be performed.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants contained herein, the parties agree as follows:

**Section 1.01 Work Orders & Purchase Orders.** For each Customer Project for which Subcontractor is to perform Work, Contractor will issue to Subcontractor either a Work Order or a purchase order. Each Work Order shall set forth Contractor's and Subcontractor's specific agreement with respect to the Scope of Services. Each Work Order shall be substantially in the form of the sample Work Order attached hereto as Exhibit A.

**Section 1.02 Execution of Work Order.** Upon receipt of a Work Order from Contractor, Subcontractor shall execute the Work Order and return a fully-executed copy to Contractor no later than two (2) business days after receipt. By commencing any part of the Work, Subcontractor shall be deemed to have consented to the Work Order and such commencement of performance shall be unequivocally effective as Subcontractor's consent to the Work Order, as of date of issuance of the Work Order, notwithstanding the absence of Subcontractor's signature. A fully executed copy of the Work Order transmitted electronically by either party and/or both parties shall suffice in all events as an original. Thereafter, the Work shall then be performed consistent with the provisions of the Contract Documents.

**IN WITNESS WHEREOF**, the duly authorized representatives of the parties have each executed this Subcontract Agreement ("Subcontract"), effective as of the date written above.

### CONTRACTOR

Brady Trane Service, Inc.

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

(Signature)

\_\_\_\_\_  
(Printed Name)

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

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

### SUBCONTRACTOR

Subcontractor's Legal Name: \_\_\_\_\_

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

(Signature)

\_\_\_\_\_  
(Printed Name)

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

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



## ***Master Construction Subcontract***

**Definitions.** As used throughout the Contract Documents, the following terms when capitalized shall have the designated meanings and other terms used herein but not defined below shall have the meanings ascribed to them throughout this Subcontract:

“Applicable Laws” means all laws, building codes, rules, regulations, or orders of any federal, state, county, local, or other governmental body, agency or other authority having jurisdiction over the Site, or the performance of the Work at the Site, as may be in effect from time to time.

“Certificate of Final Completion” means a form or documentation certifying Subcontractor’s claim of final completion of the Work.

“Certificate of Substantial Completion” means a form or documentation certifying Subcontractor’s substantial completion of the Work.

“Change Order” refers to a written document issued by Contractor after commencement of the Work at the Site, which modifies the terms set forth in the Work Order. To be effective, any Change Order must be executed by both Contractor and Subcontractor.

“Completion Date” (or the plural thereof) means the dates specified in the Work Order for Subcontractor’s achievement of Substantial Completion and/or Final Completion, subject to any extension thereof by Change Order.

“Contract Documents” refers to, collectively, the Customer Contract, the Work Order or purchase order issued by Contractor to Subcontractor for the Customer Project to which the Work Order purchase order applies (together with any documents identified as comprising a part of the Contract Documents in Section 1.04 of the Work Order), this Subcontract, and any Change Orders issued by Contractor during the course of the Work, and all plans, specifications, and addenda.

“Contract Time” means the amount of time specified in each Work Order for the full and complete installation of the air conditioning improvements that are the subject of each Work Order.

“Customer” means the entity with whom Contractor has entered into a contract for the performance of the Work that is the subject of the Work Order. Customer can be the actual owner of the Site or a lessee of thereof.

“Customer Contract” means the contract between Contractor and Customer.

“Customer Project” means the entirety of the Work to be performed by Subcontractor, as well as all efforts of Contractor and other subcontractors of Contractor regarding the Work, Site, and other matters necessary to accomplish the Work, all as described in a Work Order or purchase order.

“Day” as used in the Contract Documents shall mean calendar day unless otherwise specifically stated.

“Final Completion” means the full completion of the Work as required by the Contract Documents, as evidenced by Contractor’s written acceptance of the completed Work in accordance with the provisions of Section 2.06 of this Subcontract.

“Owner” means the person or entity that is the owner (or lessee) of the Site upon or at which the Work shall be performed.

“Permits” means all permits, waivers, variances, authorizations, or licenses issued by any federal, state, county, local, or other governmental body, agency, or other authority having jurisdiction over the Site, or the performance of the Work at the Site, as may be in effect from time to time.

“Site” means the building, office space, business location, or other location where the Work is to be performed or furnished that is the subject of a Work Order.

“Subcontract Price” means the lump sum amount specified in each Work Order that is payable by Contractor to Subcontractor in consideration for the performance of the Work as described in of each Work Order. Subcontract Price shall also include other compensation expressly agreed by Contractor to be paid to Subcontractor in consideration of the Work, including but not limited to agreed-upon unit prices.

“Subcontract Time” means the period of time, including authorized adjustments, allotted for Subcontractor to achieve Substantial Completion of the Work by the Substantial Completion date specified on the Work Order.

“Substantial Completion” means the stage in the progress of the Work when the Work is sufficiently complete so that Owner can occupy or utilize their property for its intended use.

“Work” means the complete performance of the scope of Work as specified in either a purchase order or a Work Order and includes all labor necessary to produce, furnish, and/or install such services, all materials, fabrications, assemblies, and equipment (excluding Contractor supplied equipment) incorporated or to be incorporated in such Work.

“Work Order” means a document issued by Contractor that sets forth Contractor’s and Subcontractor’s specific agreement with respect to terms that are unique for the Work to be performed, substantially in the form of the sample form of the Work Order attached hereto as Exhibit A to this Subcontract. The Work Order shall be executed by both Contractor and Subcontractor; provided, however, that, in the event Subcontractor commences any part of the Work, Subcontractor shall be deemed to have consented to the Work Order and such commencement of performance shall be unequivocally effective as Subcontractor’s consent to the Work Order, as of date of issuance of the Work Order, notwithstanding the absence of Subcontractor’s signature.

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Words and abbreviations that have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

### **Article 2 – Scheduling, Lower Tier Subcontractors, Coordination, and Final Completion**

**Section 2.01 Scheduling.** Performance of the Work shall commence at the Site upon Subcontractor's execution of the Work Order, unless a different schedule is stated in the Work Order or is otherwise mutually agreed upon for the Work. Subcontractor shall perform such Work expeditiously. By executing or performing Work pursuant to the Work Order, Subcontractor warrants to Contractor that the time allotted for performance of the Work is a reasonable and sufficient amount of time to complete the Work in the manner required by the Work Order and this Subcontract, as either may be amended from time to time.

**Section 2.02 Lower Tier Subcontractors.** Prior to commencement of the Work, Subcontractor shall submit to Contractor for Contractor's approval a list of subcontractors, if any, listed by proposed scopes of work, with addresses and telephone numbers, proposed to be used to perform the Subcontractor's scope of Work. No subcontractors or suppliers shall be used on the project without Contractor's prior written approval. All subcontracts and purchase orders issued by Subcontractor shall be assignable to Contractor by Subcontractor. Contractor shall have the right to object to any of the subcontractors and suppliers, but Contractor's approval shall not be unreasonably withheld. All collective bargaining labor agreements that may apply for the performance of any part of the Work at the Site shall be observed. As applicable, union labor, or prevailing wages as required, shall be used to perform the Work if conditions or agreements at the Site require such labor.

**Section 2.03 Coordination.** Upon Contractor's direction, Subcontractor shall participate with Contractor in any meeting(s) with Customer. Contractor shall have the right to require that the Work be performed consistently with the progress of the work of Contractor and of other contractors at the Site and Subcontractor shall cooperate with Contractor and all others whose work may interfere with the Work. As required by Contractor, the schedule shall be periodically revised as required by the conditions of the Work, progress thereon, and the Project. Any schedule shall be subject to Contractor's approval. The Work shall be performed so as to not unduly interfere with or disrupt the business operations of Owner. It is hereby recognized that, to accommodate ongoing business operations located on the Site, the Work may need to be performed during non-regular business hours, including working evenings and/or weekends. The Work shall be confined to those areas identified by Contractor and/or Customer. All ingress and egress to the Site shall be confined to those areas approved in advance by Contractor and/or Customer.

**Section 2.04 Temporary Facilities.** Unless otherwise specified in the Work Order, Subcontractor shall provide all temporary facilities for its use and shall arrange for temporary

connections and lines for connection to and use of water, electricity, telephone, gas, compressed air, steam, heat, and other similar services. Subcontractor shall remove all temporary construction, signs and facilities upon completion of the Work and restore the Site to the condition in which it was originally found.

**Section 2.05 Substantial Completion.** When Subcontractor considers that the Work is substantially complete, Subcontractor will submit to Contractor a proposed "punchlist" listing items of the Work to be completed prior to Final Completion. Subcontractor and Contractor shall inspect the Work (or portion thereof) to determine if the same is substantially complete. Contractor and Subcontractor shall add to the punchlist any item of work that has not been completed. When the Work is substantially complete, Contractor and Subcontractor shall execute a Certificate of Substantial Completion (in the form of Exhibit E.1) setting forth the date of Substantial Completion and stating the date by which Subcontractor shall complete the items of work included on the punchlist.

**Section 2.06 Final Completion.** When Subcontractor considers the Work (including the items contained on the punchlist) fully complete in accordance with the Contract Documents, Subcontractor shall complete the Certificate of Final Completion (in the form of Exhibit E.2) and submit the same to Contractor for review, which shall constitute Subcontractor's certification to Contractor in writing that Final Completion has been achieved by virtue of the following:

- (a) Subcontractor has inspected all of the Work and has determined that the Work has been completed in accordance with this Subcontract and the Work Order;
- (b) Subcontractor has cleared, tested and started-up the equipment at the Site and said equipment is operational; and
- (c) Subcontractor has obtained all Permit sign-offs or other approvals of any governmental agency with authority over the Work that pertain to the Work and that are customarily the responsibility of an installation contractor.

Subcontractor's certification of Final Completion shall be subject to the confirmation by Contractor, which may require confirmation by Customer. To the extent required by Contractor, Customer's acceptance of the Work shall be an express condition precedent to Subcontractor obtaining final payment except to the extent that Customer's refusal or failure to provide the acceptance is due to reasons unrelated to Subcontractor's performance of the Work. Neither the issuance of a Certificate of Final Completion, nor the making of Final Payment, nor any provision in the Subcontract or Work Order, shall relieve Subcontractor of its responsibility for faulty materials, equipment or workmanship and Subcontractor, upon notification by Contractor, shall promptly remedy any such faulty materials, equipment or workmanship and pay for any damage to Contractor resulting therefrom.

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**Section 2.07 Correction of Work.** If Contractor at any time determines that any portion of the Work is incomplete or defective, Contractor will promptly notify Subcontractor of such incomplete or defective Work, itemizing and describing such remaining items with reasonable particularity. Subcontractor shall then arrange for and perform the immediate correction of all items noted by Contractor.

### **Article 3 - Contract Documents and Site Conditions**

**Section 3.01 Examination of Contract Documents And Site.** Subcontractor certifies and represents that it has carefully examined all of the Contract Documents and the Site. Subcontractor's execution of a Work Order and/or performance of any part of the Work, constitutes Subcontractor's warranty that it has satisfied itself as to the character, quality, and quantity of Work to be performed, the general and local conditions that could affect the Work or otherwise may affect the cost, difficulty, manner or progress of performing the Work, the materials and equipment and other items to be furnished, and all other requirements of the Contract Documents and this Subcontract. Subcontractor agrees that no additional charge will be made to Contractor by reason of any such conditions, applicable laws or ordinances, or other requirements and that the same will not relieve Subcontractor of its responsibility to properly complete the Work for the Subcontract Price.

In the event Subcontractor believes there is or may be any conflict between, or omission from, this Subcontract and the balance of the Contract Documents, or if Subcontractor has any doubt as to the meaning of any of them, Subcontractor shall immediately submit the matter to Contractor for written clarification. Any Work performed before receipt of such clarification shall be at Subcontractor's risk and expense. If any clarification of this Subcontract or of the other Contract Documents is needed and requested, Contractor will provide the clarification by issuing a written order. Notwithstanding any provision to the contrary, Subcontractor shall not be entitled to any increase in the Subcontract Price or extension of the Completion Dates on account of any misdescription in or omission from this Subcontract or Contract Documents of details of the Work that are clearly necessary to carry out the intent of the Contract Documents or that are customarily performed or furnished by contractors performing work similar to the Work for a complete workmanlike project.

**Section 3.02 Intent; Order of Precedence.** All references to "Subcontractor" shall be deemed to also refer to Subcontractor's employees, agents, suppliers, and subcontractors. The plans, specifications, addenda, and all of the Contract Documents, as they each relate to the Work comprise the Subcontract and are intended to be complementary and construed as a whole. However, in the event of conflict between one or more provisions of the Contract Documents, the provision imposing the more demanding term, condition, duty or standard of performance, or the greater limitation on the nature and type of relief or damages allowed to Subcontractor, shall control. A conflict exists when the same subject matter is addressed by two or more provisions of the Contract Documents in a manner that cannot be reconciled to give effect to all provisions. In the

various parts of the Contract Documents where reference is made to applicable codes and standards, the Work shall, except as otherwise specified, conform to the latest issue of the referenced code or standard available at the time the Work is performed

Any technical reports, energy audits or studies, or engineering studies or reports that may be furnished to Subcontractor are not a part of the Contract Documents (unless expressly included by reference to title, date, and author in the relevant Work Order) and are furnished to Subcontractor for informational purposes only; Contractor disclaims any responsibility for the accuracy, true location identification, and extent of any such reports or studies.

The intent of the Contract Documents is to include in the Work all labor, materials, equipment, tools, plans, water, light, power and other items necessary for Subcontractor to provide a complete workmanlike job. The titling and division of drawings and specifications by trades or other classifications is for convenience only. Subcontractor shall not be relieved of performing or furnishing any part of the Work or be entitled to extra compensation by the fact that any part of the Work could have been included under another title or division.

**Section 3.03 Unforeseen Conditions.** In the performance of the Work, if Subcontractor encounters conditions at the Site that are (i) subsurface or otherwise concealed physical conditions that differ materially from the conditions reasonably observed by Subcontractor in connection with its supplying the written estimate for the Work, or (ii) unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Work, Subcontractor shall notify Contractor of such conditions promptly, prior to significantly disturbing the same. Upon receipt of Subcontractor's notice, Contractor may investigate the claimed unforeseen condition. In the event that Contractor disagrees that an unforeseen condition exists, Subcontractor may elect to pursue a claim pursuant to the requirements of this Subcontract. However, if Contractor determines that an unforeseen condition exists and elects to proceed with the Work, a Change Order will be issued that sets forth a mutually agreeable equitable adjustment to the Subcontract Price and/or Contract Time. Should Customer not authorize the performance of additional Work or should Contractor elect not to proceed with the Work, the Work Order (or portion thereof) will be subject to termination for convenience hereunder. In the event that a complete suspension of the Work is impractical or unreasonable based on the status of the Work at the time of the discovery of the unforeseen condition, Subcontractor shall act reasonably to protect the Site from any damage.

**Section 3.04 Hazardous Substances.** Except with respect to refrigerants, glycol, and oils usually associated with heating, ventilating, and/or air conditioning equipment and except for ballasts and lamps, and except as expressly provided otherwise in a Work Order, Subcontractor's Work excludes any work connected or associated with

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Hazardous Substances. Subject to the exceptions in the preceding sentence, Hazardous Substances means any pollutant, contaminant, toxic or hazardous substance, material or waste, any dangerous, potentially dangerous, noxious, flammable, explosive, reactive or radioactive substance, material or waste, urea formaldehyde, asbestos, asbestos-containing materials ("ACM's"), polychlorinated biphenyl ("PCB"), and any other substance, the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transport, disposal, handling, or ownership of which is regulated, restricted, or prohibited, by any federal, state, or local statute, law, ordinance, code, rule or regulation now or at any time hereafter in effect, and as may be amended from time to time, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.).

Subcontractor shall not perform any identification, abatement, cleanup, removal, transport, treatment, storage or disposal of Hazardous Substances as a part of Subcontractor's Work. Should Subcontractor become aware of or suspect the presence of Hazardous Substances in the course of performing the Work which have not been disclosed by Contractor, or which present or may present a hazard to or endanger health welfare or safety, Subcontractor shall immediately stop work in the affected area and notify Contractor of the Hazardous Substances. Subcontractor shall be required to resume performance of the Work in the affected area when the affected area has been rendered harmless.

### **Article 4 - Workmanship and Warranty**

**Section 4.01 Material and Workmanship.** Subcontractor agrees to perform all Work and furnish and supply all equipment (excluding Contractor supplied equipment), supplies, and materials that may be required for the performance of the Work. Except as expressly provided in the Work Order, all material to be incorporated in the Work shall be new, of sufficient quantities to facilitate the proper and expeditious execution of the Work, of the most suitable grade for the purpose intended, and in compliance with the Contract Documents. Subcontractor shall use its best care, skill and diligence in supervising and directing the Work. Subcontractor shall have responsibility and control over the performance of the Work, including the construction methods, techniques, means and sequences for coordinating and completing the various portions of the Work, unless the Work Order gives other specific instructions concerning these matters. By written notice, Contractor may require Subcontractor to remove from the Work any employee or subcontractor of Subcontractor whom Contractor deems incompetent, careless, or otherwise objectionable.

Subcontractor shall examine materials or equipment furnished by others and handle, store and install such items to the extent installation is a part of Subcontractor's scope of Work, with appropriate skill and care to ensure a satisfactory and proper installation. Subcontractor shall be liable for loss or damage due to Subcontractor's acts or omissions and such loss or damage may be deducted from any amounts due or to become due Subcontractor under this Subcontract.

**Section 4.02 Warranty.** Subcontractor warrants that all material furnished and all Work performed under this Subcontract will be free from defects in material and workmanship for a period of one (1) year (or such longer period as may be specified elsewhere in the Contract Documents) after final acceptance by Contractor of the completed scope of work of Subcontractor. Subcontractor further agrees to furnish all warranties that are required in accordance with the Contract Documents for the Work prior to final payment. Subcontractor shall, at no cost to Contractor, promptly and satisfactorily replace any material and correct any workmanship found to be defective or otherwise not in conformity with the Subcontract requirements and remedy any damage resulting therefrom. The Subcontract warranty for corrected work shall commence anew upon completion of correction of the work and continue for one year thereafter. If required in writing by Contractor, at Subcontractor's time and expense, Subcontractor must uncover any portion of the Work which has been covered by Subcontractor in violation of the Subcontract or Contract Documents or contrary to a directive issued to Subcontractor by Contractor and then restore the uncovered work to its original condition. Except as provided in the preceding sentence, the Subcontract shall be adjusted by Change Order for the cost and time of uncovering and restoring any work which is uncovered for inspection and proves to be installed in accordance with the Subcontract and Contract Documents, provided Contractor had not previously instructed Subcontractor to leave the work uncovered. If Subcontractor uncovers work pursuant to a directive issued by Contractor, and such work upon inspection does not comply with the Subcontract and Contract Documents, then Subcontractor shall be responsible for all costs and time of uncovering, correcting and restoring the work so as to make it conform to the Subcontract and Contract Documents.

**Section 4.03 Inspection and Correction.** Contractor shall have the right to inspect and/or test any part of the Work at all reasonable times and places. If required in writing by Contractor, at Subcontractor's time and expense, Subcontractor shall uncover any portion of the Work that has been covered by Subcontractor contrary to the Contract Documents or contrary to a directive issued to Subcontractor by Contractor and then restore the uncovered work to its original condition. Except as provided in the preceding sentence and provided Contractor had not previously instructed Subcontractor to leave the work uncovered, the Work Order shall be adjusted by Change Order for the cost and time of uncovering and restoring any work that is uncovered for inspection and proves to have been installed in accordance with the Contract Documents.

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If Subcontractor uncovers work pursuant to a directive issued by Contractor, and such Work upon inspection does not comply with the Contract Documents, then Subcontractor shall be responsible for all costs and time of uncovering, correcting and restoring the Work so as to make it conform to the requirements of the Contract Documents.

**Section 4.04 Clean-up.** Subcontractor shall follow Contractor's cleanup directions and, in any event, shall (a) at all times keep the Site free from debris resulting from the Work; and (b) broom clean each work area daily prior to discontinuing work in each area. If Subcontractor fails to immediately commence compliance with cleanup duties within twenty-four (24) hours after written notification from Contractor of noncompliance, Contractor may implement appropriate cleanup measures without further notice and deduct the cost thereof from any amounts due or to become due Subcontractor or otherwise charge Subcontractor.

### **Section 4.05 Protection of People and Property.**

Subcontractors at all tiers bear the responsibility for Safety of their own employees, and for protection of the employees, guests and property of Contractor, Customer and Owner, in the course of the Work as it is effected by the Contractor(s) or Subcontractor(s) at all tiers.

Subcontractors have a duty to exercise reasonable care or a higher standard of care, as defined by regulation, and will cooperate with Contractor to satisfactorily complete the work without loss or mishap arising from unsafe practices or defective equipment in use by the Subcontractor.

Before approval of contract, Subcontractor shall make available to Contractor a copy of Subcontractor's written safety program, or Injury and Illness Prevention Program. The written program will detail methods for implementing safety measures and work practices, conforming to those required or recommended by government agencies having jurisdiction according to published enforcement guidelines and standards.

Subcontractor shall apply industry standards which are recognized to prevent injuries and property loss, and that are adopted as industry consensus standards by agencies having jurisdiction, and shall adhere to those standards, in the interest of guiding safe work practices. These safety standards are fundamental, and are in addition to Contractor Environmental Health and Safety standards, and requirements imposed by the Contract Documents.

Establishment of a safety program by Contractor to regulate activities onsite shall not relieve Subcontractor of its own responsibilities for furnishing and maintaining a work place free from recognized hazards. In addition to Subcontractor's duties to supervise and direct the actions of its employees, and to monitor the progress of the Work, Subcontractor shall maintain a safe and healthful work place and inspect the site frequently during operations.

Subcontractor shall assess safety and health hazards present on site, arising from or contained in subcontractor's own work, or arising from or issuing from adjacent activities by others

present on site, and shall undertake to protect his own employees, and the employees, guests and property of Contractor, Customer and Owner.

Subcontractor shall communicate hazards associated with chemicals and materials of trade, by informing Contractor prior to bringing the chemical materials on site, and by presenting a chemical Safety Data Sheet to Contractor.

Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Customer Project, and shall stop any part of the Work that Contractor deems unsafe until corrective measures satisfactory to Contractor are taken. Contractor holds Subcontractor solely responsible for unsafe practices of its employees, regardless of observations made by the Contractor of any such unsafe acts. Contractor holds Subcontractor responsible for correcting or controlling hazards created by actions of Subcontractor to which any persons on site are exposed. Subcontractor is responsible for its own property that is brought on site.

In any systematic efforts led by the Contractor to eliminate or reduce risks of injury on site, the Subcontractor agrees to participate fully, including reporting activities that are intended to promote a safe and healthful workplace.

Subcontractor shall notify Contractor immediately following any accident, mishap, or loss event, and promptly confirm the notice in writing to Contractor. A detailed written report shall be furnished if requested by Contractor. Subcontractor shall indemnify employees, guests and property of Contractor, Customer and Owner for losses, damages, and expenses, and fines or penalties imposed on any of them resulting from Subcontractor's safety violations. Subcontractor shall comply with any drug testing, criminal background check, security clearance, and Site access requirements in accordance with the Customer Contract.

## **Article 5- Bonds and Insurance**

**Section 5.01 Bonds.** If required by the Work Order, no later than five (5) calendar days after Subcontractor's execution of the Work Order, and in any event prior to Subcontractor's performance of any part of the Work, Subcontractor shall furnish performance and payment bonds each in the full amount of the Subcontract Price in a form and by a surety acceptable to Contractor. Subcontractor shall not be entitled to any payment under the Work Order until such bonds have been provided or until this requirement is expressly waived in writing by Contractor. Any delays in commencing any part of the Work due to Subcontractor's failure to furnish bonds shall not entitle Subcontractor to an increase in the Subcontract Price or an extension of the time within which to complete the Work. Contractor may terminate this Subcontract and/or any Work Order without liability to Subcontractor upon Subcontractor's failure to timely deliver properly executed bonds and Subcontractor agrees to indemnify and hold Contractor harmless from any and all damages

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suffered by Contractor as a result of Subcontractor's failure to deliver the bonds and Contractor's termination of this Subcontract and/or any Work Order.

**Section 5.02 Insurance.** On an annual basis, and before commencing performance of any Work, Subcontractor shall obtain and furnish Contractor with certificate(s) of insurance evidencing that Subcontractor maintains insurance policies with the coverages and minimum limits required hereby, unless higher limits or other coverages are required by the Customer Contract, covering Subcontractor's risks and contractual liability under this Subcontract and evidencing that such policies shall not be canceled without thirty (30) days prior written notice to Contractor. Subcontractor's policies shall be endorsed to specify that Subcontractor's insurance is primary and that any insurance or self-insurance maintained by Contractor shall not contribute with it. Contractor and Customer, by name, and its officers, directors, employees and agents shall be named as Additional Insureds and shall apply to both ongoing and completed operations. Additional Insured status shall apply to the General Liability and Umbrella coverages (and Pollution where required).

Subcontractor shall procure and maintain the following minimum insurance in full force and effect at all times until the Work has been completed and finally accepted, unless higher limits are required by the Contract Documents:

COVERAGES	LIMITS OF LIABILITY
Worker's Compensation	Statutory
Employers' Liability Insurance	
Each Accident	\$500,000
Disease	\$500,000
Disease Each Employee	\$500,000
Comprehensive General Liability Insurance, including Contractual Liability & Independent Contractor's Coverage	
Each Occurrence BI/PD	\$1,000,000
Aggregate	\$2,000,000
Comprehensive Automobile Injury Liability Insurance	
Per Accident BI/PD	\$1,000,000 CSL
Umbrella Liability	
Trades Contractor	\$1,000,000
Crane Operator	\$5,000,000 or \$10,000,000, as specified by Contractor in the Subcontract Work Order (Exhibit A)
Umbrella shall be excess of General Liability, Employers' Liability and Auto	
Pollution	\$5,000,000 per occurrence \$5,000,000 Annual Aggregate

The Pollution policy should include coverage for fungi/microbe (mold) and should not exclude asbestos.

Should any portion of the required insurance be on a "Claims Made" policy, upon execution hereof, Subcontractor shall

agree to purchase an extended reporting period of at least three years if the coverage is cancelled/non-renewed after completion of this Subcontract and Services to be performed hereunder. Any retroactive date on any Claims Made policy shall be prior to the date of this Subcontract or any commencement of Services to be performed hereunder.

Subcontractor shall be responsible for and maintain coverage on their own tools and equipment on the job site, including Installation Floater for equipment and materials they will be installing.

Such Certificates of Insurance (other than with respect to Employers' Liability insurance and Workers' Compensation coverage) shall state that Contractor and Customer, by name, "and its officers, directors, employees, and agents are named as Additional Insureds under the above-listed policies to the extent of Subcontractor's contractual indemnity obligations and shall apply to both ongoing and completed operations (specified on the Certificate of Insurance)." A copy of the Additional Insured endorsement shall be attached to the Certificate. Neither the procurement nor maintenance of any type of insurance by Subcontractor shall in any way be construed or deemed to limit, waive, or release Subcontractor from any of the obligations and risks impressed upon and/or assumed by Subcontractor under this Subcontract, or to be a limitation on the nature and extent of such obligations and risks. All rights of subrogation by Subcontractor and its insurer(s) are hereby waived to the extent permitted by applicable law. Subcontractor shall provide Contractor with a Certificate of Insurance, including the waiver of subrogation by Subcontractor and its insurer(s) for above referenced policies.

Subcontractor shall provide a replacement Certificate of Insurance upon renewal of any or all of the policies described within a reasonable time upon renewal, and at any other time as reasonably requested by Contractor.

### Article 6 – Subcontractor Liability Generally

**Section 6.01 Risk of Loss.** Until issuance of the Certificate of Final Completion by Contractor, Subcontractor shall protect against, and shall bear the risk of, any loss of or damage to the Work or any materials, equipment (including the Contractor supplied equipment incorporated into the Work) or other items to be incorporated therein arising from any cause, except the negligence or willful misconduct of Contractor or its employees. Without cost to Contractor, Subcontractor shall promptly comply with all reasonable requests by Contractor to protect such property.

**Section 6.02 Indemnity.** To the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold Contractor and Customer, and their respective officers, directors, employees and agents, harmless from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or any other damages, arising out of or resulting from the acts and omissions of

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## ***Master Construction Subcontract***

Subcontractor, its subcontractors and agents, and their respective employees and agents. However, Subcontractor shall not be required to indemnify or defend Contractor and Customer against claims, damages, expenses or liabilities to the extent attributable to the sole respective negligence of Contractor and Customer. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination of this Subcontract or any Work Order, with respect to any claims based on facts or conditions which occurred prior to expiration or termination.

**Section 6.03 Damages For Delay.** Time is of the essence in the performance and completion of the Work. Subject to Section 6.04, Subcontractor shall be liable to Contractor for any damages suffered by Contractor if Subcontractor fails to complete the Work by the Completion Dates and in the manner required by the Contract Documents, which sums may be deducted from any sums due or to become due Subcontractor.

**Section 6.04 Excusable Delays and Suspension of Work.** Subcontractor is not liable for delay in performance to the extent such delay is due to causes reasonably beyond Subcontractor's control that are not due to removable or remediable causes that Subcontractor fails to promptly remove or remedy and which arise without Subcontractor's fault or negligence, provided that: (a) Subcontractor diligently and promptly notifies Contractor in writing of conditions that will or are expected to result in delay and the extent of such delay; (b) such delay does not cause Contractor to become liable for any damages or penalty to the Customer; (c) Contractor was advised in advance of and had consented in writing to Subcontractor's then applicable schedule for completion; and (d) such delay is not attributable to labor disputes, strikes or other strife, none of which shall be an excusable delay or otherwise entitle Subcontractor to an extension of Completion Dates or increase in Subcontract Price.

Notwithstanding any provision to the contrary, Contractor may direct in writing that Subcontractor suspend, delay, or interrupt all or any part of the Work for such period of time as Contractor determines to be appropriate or necessary. Subcontractor shall not be entitled to any adjustment to the Subcontract Price on account of such suspension, delay, or interruption. Subcontractor shall immediately resume performance of the Work upon the direction of Contractor.

**Section 6.05 Liens And Claims.** Subcontractor warrants and guarantees that title to all Work furnished pursuant to a Work Order will pass to Contractor free and clear of all liens, claims, security interests or encumbrances no later than the date Subcontractor receives Final Payment pursuant to such Work Order. In the event that Subcontractor elects to perfect any mechanic's lien rights, including the filing of any preliminary notices regarding the Work, with respect to any Customer Project, Subcontractor shall supply written notice to Contractor before any notice is supplied to the Customer or Owner. Subcontractor shall fully indemnify, hold harmless and protect Owner, Customer, and Contractor against all liens and/or claims of any laborers, materialmen, and subcontractors of Subcontractor or its subcontractors against

Owner, Customer, Contractor and/or the Site on or for which the Work is performed in connection with labor or material furnished by Subcontractor (and any party acting for or under Subcontractor) and shall furnish to Contractor, upon request, affidavits of status of accounts and releases of liens. No later than ten (10) days before taking such action, Subcontractor shall provide to Contractor written notice of its intent to file a notice of lien against the real property constituting the Site or funds held by Customer or Owner that are due, which notice shall state the amount claimed, excluding interest and attorney's fees.

## **Article 7 - Subcontractor Payment**

**Section 7.01 Payments.** The Subcontract Price represents Subcontractor's full compensation for performing the Work, subject to adjustments by Change Order expressly provided for herein. The Subcontract Price includes all federal, state and local taxes and fees that may be due or charged by reason of performance of the Subcontract.

**Section 7.02 Method of Payment.** Contractor will pay Subcontractor by progress payments over the course of the performance of the Work, subject to the withholding of retainage in accordance with the retainage percentage listed in the Work Order or, if no percentage is specified, the retainage percentage shall be 5% or the maximum allowed by applicable law.

Within fourteen (14) calendar days from the date of a Work Order, Subcontractor shall submit to Contractor for approval a Schedule of Values apportioned to the various divisions or phases of the Work. Each line item shall be assigned a monetary price so that the total of all items equals the Subcontract Price. Subcontractor shall submit to Contractor its payment applications (in schedule of value format) for Work completed and to be completed during the current month as required for Contractor to comply with Customer billing requirements.

Unless a shorter period is prescribed by applicable law and except as otherwise may be provided in a Work Order, progress payments to Subcontractor for apparent satisfactory performance of the Work shall be made within forty-five (45) calendar days after receipt of an acceptable payment application or seven (7) calendar days after receipt of payment by Contractor from Customer, whichever date is later. Payment to Subcontractor shall not constitute or imply acceptance by Contractor or Customer of any part of the Work.

**Section 7.03 Conditions to Payment.** No payments shall be made to Subcontractor until Subcontractor furnishes to Contractor the certificate of insurance and other documentation required by this Subcontract or the Contract Documents. Subcontractor shall pay for all labor, materials and equipment used in the performance of the Work through no later than the most current period for which progress payments have been made by Contractor. With each application for payment, Subcontractor shall furnish Subcontractor's Affidavit of Payment of Debts and Claims and Partial & Conditional Waiver of Lien form (attached

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## **Master Construction Subcontract**

hereto as Exhibit C) for Subcontractor and for each of Subcontractor's subcontractors and major material or equipment suppliers.

Subcontractor shall furnish to Contractor data requested by Contractor to support the amounts claimed in payment applications, including without limitation copies of invoices from subcontractors and material suppliers, field reports, and daily reports.

Approval of applications for materials and equipment stored on the Site shall be conditioned on submission by Subcontractor of bills of sale and applicable insurance or other procedures satisfactory to Contractor to establish the proper valuation of and Customer's title to the stored materials and equipment and to otherwise protect Customer's and Contractor's interests therein, including transportation to the Site.

**Section 7.04 Final Payment.** Unless a shorter period is prescribed by applicable law and except as otherwise may be provided in a Work Order, final payment shall be made seven (7) calendar days after receipt of payment by Contractor from Customer. Final payment shall be conditioned upon receipt from Subcontractor of the Affidavit of Payment of Debts and Claims and Final & Conditional Waiver of Lien form (attached hereto as Exhibit D) for Subcontractor and each of Subcontractor's subcontractors and major material or equipment suppliers and such additional documentation required by Contractor, in forms suitable to Contractor. Withheld retention shall be paid at final payment, subject to the provisions of this Subcontract.

Subcontractor's acceptance of final payment shall constitute a waiver of all claims of Subcontractor against Contractor, Owner, Customer, and the Site or otherwise related to the Work.

**Section 7.05 Withholding of Payment.** Payments otherwise due Subcontractor may be withheld by Contractor on account of any or all of the following:

- (a) defective work performed by Subcontractor and not remedied;
- (b) claims filed by third parties in connection with Subcontractor's work or upon presentation of reasonable evidence indicating the probable filing of such claims;
- (c) failure of Subcontractor to make payments to its subcontractors, laborers, or materialmen for work done or material furnished;
- (d) a reasonable doubt that the Work can be completed for the balance then owing Subcontractor by Contractor; and/or
- (e) any breach of this Subcontract by Subcontractor.

Subcontractor agrees that Contractor may in its sole discretion exercise the right of setoff to any sums that are due under any Work Order issued under this Master Construction Subcontract. Contractor may terminate any Work Order in accordance with this Agreement without invalidating other Work Orders.

## **Article 8 - Changes and Claims**

**Section 8.01 Changes to the Work.** By directive to proceed or written Change Order, and without notice to Subcontractor's sureties, Contractor may at any time modify, change, omit or add to the Work to be performed and Subcontractor shall proceed with the Work as directed. In the event a directive to proceed is issued, Subcontractor shall proceed promptly and diligently with the performance of the directed Work, notwithstanding the fact that the directive does not contain an adjustment to Subcontract Price or Subcontract Time, each of which shall be determined at a later time by issuance of a Change Order. Neither the issuance nor performance of such a directive to proceed shall prejudice the rights of either party to contest at any time the entitlement to, or the amount of, an equitable adjustment related to such directive. Notwithstanding the foregoing, by written order to Subcontractor, Contractor may direct Subcontractor to perform incidental changes in the Work that are consistent with the scope and intent of the Contract Documents and do not involve adjustments in the Subcontract Price or Completion Dates. Subcontractor shall promptly comply with such written orders.

If a Change Order provides for an adjustment to the Contract Price, such adjustment will be made by Contractor using one of the following methods, at Contractor's discretion:

- (a) a lump sum agreed to by Contractor and Subcontractor;
- (b) unit prices set forth in this Agreement or subsequently agreed to; or
- (c) cost of the work ordered plus a fee agreed to by the parties.

**Section 8.02 Claims.** Subcontractor shall make all claims against Contractor for which Contractor or Customer is or may be liable in writing and within five (5) calendar days of the date when Subcontractor knew of the facts giving rise to the event for which claim is made, but in no event later than ten (10) calendar days prior to Customer's acceptance of the Work. Subcontractor agrees that any claim for extra compensation not made in accordance with these requirements shall be deemed waived by Subcontractor. Such notice of claim must clearly identify the order or event that is relied upon and contain a clear statement of why it constitutes a basis for adjustment.

Contractor's obligation to pay extra compensation is contingent upon Subcontractor having fully performed its obligations under this Subcontract and the applicable Work Order(s).

## **Article 9 - Default and Termination**

**Section 9.01 Subcontractor's Default.** Each of the following shall constitute a material default (a "Default") of this Subcontract by Subcontractor:

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## **Master Construction Subcontract**

- (a) Subcontractor's refusal or failure to prosecute the Work with such diligence as will ensure its completion within the time specified in any Work Order;
- (b) Subcontractor's refusal or failure to complete the Work by a Completion Date;
- (c) Subcontractor's refusal or failure to comply with any order or directive issued under this Subcontract;
- (d) Subcontractor otherwise refuses or fails to comply with any provision of this Subcontract and/or any Work Order;
- (e) claims are filed by third parties in connection with Subcontractor's Work;
- (f) failure of Subcontractor to make payments to its subcontractors, laborers, or materialmen for work done or material furnished; or
- (g) The commencement of any voluntary or involuntary proceedings in bankruptcy or receivership by or against Subcontractor, Subcontractor shall become insolvent, make a general assignment for the benefit of creditors, or Subcontractor shall fail to pay its debts as and when they become due.

If Subcontractor fails, upon one (1) working day's written notice from Contractor, to diligently and promptly commence and continue satisfactory correction of a Default, Contractor, with or without terminating Subcontractor's right to proceed with all or any part of the Work under one or more Work Orders, may assume control of the Work and complete the same, by contract or otherwise, and may take possession of and utilize in completing the Work any materials, implements, equipment, or tools as may be on the site of the Work.

In the event of a violation of Section 10.06 or (in Contractor's judgment) an emergency affecting the safety of persons or property, Contractor may proceed to correct a Default and/or terminate this Subcontract or the applicable Work Orders, without first giving one (1) working day's written notice to Subcontractor, but shall give prompt written notice of such action to Subcontractor. The rights and remedies of Contractor provided in this Section are in addition to any other rights and remedies provided by law or under this Subcontract. Subcontractor is not entitled to any further payment until the Work is completed and the costs for the Work are known. Subcontractor shall be liable for all costs, including reasonable overhead, profit and attorneys' fees, incurred to complete performance of the terminated work, together with any damages caused as a result of any delay occasioned by Subcontractor's Default, which costs and damages may be deducted from any moneys due or to become due Subcontractor under this Subcontract. Subcontractor shall be liable for the payment of any amount by which such amounts may exceed the unpaid balance of the Subcontract Price. If the unpaid balance of the Subcontract Price exceeds the costs of finishing the Work and any damages incurred by Contractor, such excess shall be paid to Subcontractor.

Immediately upon Contractor's request, pursuant to this Section or a termination of the Subcontract, Subcontractor shall deliver to Contractor or, at Contractor's direction, the project site, all materials and equipment purchased for

performance of the Work so as to not delay the project in any way. Should Subcontractor delay or cause delays due to lack of cooperation in this regard, Subcontractor shall be responsible for any and all costs incurred by Contractor as a result thereof, including procuring necessary materials or equipment or supplying additional or overtime labor. Immediately upon Contractor's direction, Subcontractor shall assign its agreements with subcontractors and suppliers to Contractor.

**Section 9.02 Termination for Contractor's Convenience.** This Subcontract and/or any Work Order may be terminated for any reason by Contractor in whole or in part at any time by written notice that specifically refers to this Section. A written notice that does not specifically refer to this Section shall be treated as a termination for Default under Section 9.01; provided, however, that a termination for Default of Subcontractor that is later determined to be wrongful shall be treated as a termination for convenience, in which event Subcontractor will stop Work and follow Contractor's instructions for winding down. Subcontractor will be entitled to payment for all work satisfactorily completed based on Subcontractor's actual cost of performing such work plus reasonable overhead and profit, not to exceed the Subcontract Price and excluding uncompleted Work, anticipated profit or unabsorbed overhead. Immediately upon notice from Contractor to Subcontractor, Subcontractor shall submit to Contractor a statement showing all of the costs incurred by Subcontractor in the performance of the Work terminated.

**Section 9.03 Termination or Suspension Due to Customer.** The parties agree that the basic assumption underlying the mutual obligations and responsibilities under any Work Order is the performance of the Work for the Customer. If the Customer Contract is breached, rescinded, suspended, or terminated, for any or no reason, or if the Customer becomes insolvent, a voluntary or involuntary proceeding in bankruptcy or receivership is commenced by or against either, or if the Customer makes a general assignment for the benefit of creditors, Contractor shall have the right to immediately terminate this Subcontract and/or any Work Orders upon written notice to Subcontractor.

Unless the Customer Contract is breached, rescinded, suspended, or terminated due in whole or in part to a Default or failure of Subcontractor, and if Subcontractor is not then in Default hereunder, Contractor will allocate a fair and equitable share of any sums received from Customer on account of Subcontractor's Work completed to the date of such breach, rescission, suspension, or termination, but in no event will Contractor be obligated to Subcontractor for any anticipatory profits or damages incurred by Subcontractor as a result of the termination of this Subcontract, any Work Order, or otherwise.

## **Article 10 - General Provisions.**

**Section 10.01 Term of Subcontract.** Unless terminated pursuant to the provisions hereof, this Subcontract shall commence as of the Effective Date, for an initial term of two

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## ***Master Construction Subcontract***

(2) years. At the end of the initial term, this Subcontract shall automatically renew for additional one (1) year terms. Either party may terminate by providing written notice at least thirty (30) days prior to the expiration of the term.

The expiration of this Subcontract shall not terminate any Work Order or purchase order then in existence until the Subcontractor has fulfilled its obligations as set forth therein. The insurance requirements of this Subcontract shall continue to apply to Work Orders and purchase orders until the Subcontractor has fulfilled its obligations as set forth therein.

**Section 10.02 Independent Contractor.** Contractor has retained Subcontractor to provide the labor, materials, equipment and services referred to herein and to perform the Work as an independent contractor and Subcontractor shall at all times be deemed an independent contractor in connection with this Subcontract. Nothing in this Subcontract shall be construed as reserving or granting to Contractor any right to exercise any control over or to direct the conduct or management of Subcontractor's business or operations. The entire control and direction of such business and operations shall be and shall remain with Subcontractor. Neither Subcontractor nor any person performing any duties or engaged in any work on behalf of Subcontractor shall be deemed an employee or agent of Contractor or Customer.

**Section 10.03 Assignments/Subcontracts.** No assignments by Subcontractor of this Subcontract, any Work Order, or of any amounts due or to become due under this Subcontract or any Work Order shall be binding upon Contractor unless and until Contractor's written consent thereto is provided, in which event this Subcontract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Subcontractor shall not further subcontract portions of this Subcontract or any Work Order without Contractor's prior written approval.

**Section 10.04 Attorneys' Fees and Costs.** Should either party employ an attorney to institute suit or demand arbitration to enforce any of the provisions hereof to protect its interests in any manner arising under this Subcontract, or to recover on a surety bond furnished by a party to this Subcontract, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs, charges, and expenses incurred therein. A prevailing party shall be the party that recovers 50% more from a final adjudication than the other party last offered in compromise or settlement. A party will be considered the prevailing party if the final adjudication is equal to or less than its last offer of compromise or settlement.

**Section 10.05 Notices.** All notices to be given by either party to the other shall be in writing and must be either delivered or mailed by registered or certified mail, return receipt requested, Attn: Legal Notices, at the address set forth on the first page of this Subcontract, or such other addresses as either party may hereinafter designate by notice to the other. Notices are deemed delivered or given and become effective 5 business days after mailing.

### **Section 10.06 Compliance with Applicable Laws.**

Subcontractor shall comply with all applicable federal, state and local laws, ordinances, and codes and all lawful orders, rules and regulations. Subcontractor shall, without additional expense to Contractor, obtain and pay fees for all licenses and permits required for the prosecution of the Work. The provisions of Executive Order 11246 and the Equal Employment Opportunity clause, section 60-4.3(a) of 41 CFR, concerning equal opportunity obligations of federal contractors and subcontractors; Executive Order 11701 and the Affirmative Action clause, section 60-250.4 of 41 CFR, concerning affirmative action obligations of federal contractors and subcontractors; Executive Order 11758 and the Affirmative Action clause, section 60-741.4 of 41 CFR, concerning affirmative action obligations for handicapped workers of federal contractors and subcontractors; and Executive Order 13201 and section 29 CFR 470, regarding the notice of employee rights concerning union dues and fees, are all incorporated herein by reference.

Subcontractor agrees that it shall only supply foreign nationals working as employees under this Subcontract who satisfy all U.S. immigration laws, including the L-1 Visa (Intercompany Transferee) Reform Act of 2004 (the "L-1 Reform Act") and the H-1B Visa Reform Act of 2004 (the "H-1B Reform Act").

- (a) Subcontractor agrees that every L-1 petition submitted for employees who will work at the Site shall contain, among other things, the following: (i) Part 4, Form I-129S (or equivalent): Subcontractor, c/o Contractor [at the address where Subcontractor employee will work]; and (ii) a supporting letter that includes a statement clearly indicating: (a) at what Contractor project site the employee will work and providing the full address of that site; and (b) what specialized knowledge (as defined by 8 U.S.C. §1184(c)(2)(B), as amended, and as interpreted by the U.S. Citizenship and Immigration Services ["USCIS"] or the U.S. State Department ["DOS"] each foreign national has and will utilize at the Contractor work site; and (c) how the Subcontractor will control and supervise the employee at the work site.
- (b) The Subcontractor warrants and represents that every statement in its L-1 petitions for its employees will be true and accurate and agrees to notify Contractor immediately in the event that it discovers a violation of this paragraph in the manner required by Section 10.05. The Subcontractor further agrees that any violation of this Section shall be considered a material breach of this Subcontract and shall entitle Contractor to terminate this Subcontract immediately upon notice given pursuant to Section 10.05.
- (c) The Subcontractor warrants and represents that it will not place any H-1B employee on any Contractor work site in violation of either the L-1B

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## ***Master Construction Subcontract***

or the H-1B Reform Acts or any other legal provision(s).

- (d) Subcontractor further agrees to: (i) identify for Contractor all foreign nationals in its employ who will work at a Contractor work site, (ii) provide Contractor with the nonimmigrant visa classifications of these foreign nationals, and (iii) maintain at the Contractor work site a complete and full copy of all visa petition materials submitted to the USCIS or DOL in connection with the Subcontractor's efforts to secure a nonimmigrant working visa for the employee.
- (e) Subcontractor further agrees that Contractor or its representatives shall have the right, without prior notice to Subcontractor, to inspect and/or copy any and all nonimmigrant visa materials maintained by Subcontractor as required.

Contractor is a federal contractor which complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250.

**Section 10.07 Disputes.** Contractor may require Subcontractor to submit a dispute to Contractor in accordance with the dispute provisions of the Contract Documents and Subcontractor's sole remedy shall be as set forth in the Contract Documents if so required by Contractor. Any other dispute, controversy or claim (hereinafter collectively referred to as "Dispute") arising out of or relating to this Subcontract or any alleged breach hereof, shall be resolved by resort to such rights and remedies as the parties each may have at law or in equity. Except to the extent that this Subcontract expressly permits a party to suspend performance, pending final resolution of a Dispute, the parties shall each proceed diligently and faithfully with performance of their respective obligations under this Subcontract.

**Section 10.08 Representations.** Each party executing this Subcontract warrants and represents to the other that it has full power and authority to enter into this Subcontract, to bind itself to the obligations hereunder, and that the individual signing this Subcontract has the requisite power and authority to bind the party on behalf of which the individual signs. Subcontractor warrants that it has not given nor received any commissions, payments, gifts, kickbacks, entertainment (other than of a nominal value), or other things of value in connection with this Subcontract and acknowledges that the giving or receiving of any such consideration may result in the cancellation of this and all future contracts.

**Section 10.09 Severability and Waiver.** If any term or conditions of this Agreement is invalid, illegal or incapable of

being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Upon any such determination of invalidity, illegality or unenforceability, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in an acceptable manner, to the end that the transactions contemplated by this Agreement are consummated to the extent possible. The failure of either party to at any time insist upon the performance of any of the terms of this Subcontract, or to exercise any right, shall not be construed as a waiver of such term or right.

**Section 10.10 Publicity.** Subcontractor will not make any mention of this Subcontract, any Work Order, or Subcontractor's work hereunder in any advertisement, promotional material, publicity or press release without Contractor's prior written consent or except as required by law.

**Section 10.11 Governing Law.** This Agreement is made and interpreted under the laws of the State of North Carolina. North Carolina law shall govern this Agreement without regard to any competing choice of law provision. The state court of Guilford County shall be the sole and exclusive jurisdiction for any civil action arising out of this Agreement.

**Section 10.12 Complete Agreement.** This Subcontract, the balance of the Contract Documents, and any documents incorporated herein by reference, shall constitute the entire agreement between the parties. There are no expressed or implied, oral or other agreements or understandings between the parties of any kind pertaining to the Work that have not been set forth in this Subcontract. This Subcontract cannot be modified except by a writing signed by an authorized representative of each party.

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***Master Construction Subcontract***

**Attachments:**

- **Exhibit A – Subcontract Work Order**
- **Exhibit B – Subcontract Special Conditions**
- **Exhibit C - Subcontractor's Affidavit of Payment of Debts and Claims and Partial and Conditional Waiver of Lien Form**
- **Exhibit D - Subcontractor's Affidavit of Payment of Debts and Claims and Final and Conditional Waiver of Lien Form**

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Exhibit A

Subcontract Work Order

CONTRACTOR

Brady Trane Service, Inc.  
2025 16th Street  
Greensboro, NC 27405

Subcontractor's Legal Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
License Number: \_\_\_\_\_  
State Where License Issued: \_\_\_\_\_  
Trade: \_\_\_\_\_

SUBCONTRACTOR

BILL TO

Brady Trane Service, Inc.  
Accounts Payable  
PO Box 13587  
Greensboro, NC 27415

Work Order No: \_\_\_\_\_  
Work Order Date: \_\_\_\_\_  
Project: \_\_\_\_\_  
Project Description: \_\_\_\_\_  
Vendor ID: \_\_\_\_\_

Brady Trane Service, Inc., the ("Contractor"), enters into this agreement the ("Agreement") with \_\_\_\_\_, the ("Subcontractor"), individually a ("Party") and collectively the ("Parties"), on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to perform the work as identified in Article 2 herein. This Agreement shall not include any additional or conflicting terms and conditions that may be contained in the Subcontractor's proposal or quote, all of which additional or conflicting terms and conditions are hereby rejected by Contractor.

**ARTICLE 1: CONTRACT PAYMENT.** Payments to Subcontractor shall be made within forty-five (45) calendar days of Contractor's receipt of an acceptable invoice. Payment to Subcontractor shall not constitute or imply acceptance by Contractor.

**ARTICLE 2: SCOPE OF SERVICES.** Subcontractor agrees to commence the work necessary to complete:

**ARTICLE 3: PRICE.** Contractor accepts Subcontractor's quote of \$\_\_\_\_\_. Parts/equipment shall cost \$\_\_\_\_\_, and labor shall cost \$\_\_\_\_\_. If billing is to be time and material, the hourly rate is \$\_\_\_\_\_/hour.

**ARTICLE 4: SUBCONTRACT VALIDITY.** In the event any provision of this Agreement shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the enforceability of the remaining provisions.

**ARTICLE 5: SPECIAL PROVISIONS.** (Insert any special provisions required by this Agreement or Drawing/Plans)

**ARTICLE 6: CHANGES.** The Parties may order additional work, deletions, or other modifications to the Agreement that may increase or decrease the cost of work ("Change Order").

**ARTICLE 7: LAW & VENUE.** This Agreement is governed by the laws of North Carolina and the state courts of Guilford County will be the sole and exclusive venue for any legal action.

**ARTICLE 8: WARRANTY.** Subcontractor warrants its work against all deficiencies and defects in materials and/or workmanship for a period of one (1) year from the date of completion of the Agreement and agrees to satisfy and correct such deficiencies or defects without cost.

**ARTICLE 9: SUBCONTRACTOR'S WORK.** Subcontractor shall perform Subcontractor's work in a good and workmanlike manner, in accordance with this Agreement. Contractor shall be responsible for the scheduling and coordination of trades.

**ARTICLE 10: INSURANCE.** Subcontractor shall procure and maintain, for the duration of Subcontractor's Work, worker's compensation, employer's liability, automobile and comprehensive general liability insurance as specified in the Brady Sample Certificate. Such insurance shall be primary and non-contributory. Subcontractor's certificate of insurance shall name Brady Trane Service, Inc., Brady Services, Inc., Brady Sales and Service, Inc., J. Brady Contracting, Inc., Brady Integrated Security, Inc. and Brady Parts, Inc. as additional insured and waive subrogation in favor of the certificate holder.

**ARTICLE 11: RISK OF LOSS/INDEMNIFICATION.** Subcontractor shall be solely responsible for the unsafe practices of its employees and shall indemnify Contractor for losses and penalties resulting from Subcontractor's safety violations. Additionally, Subcontractor shall bear the risk of loss or damage to the work, materials and equipment. Subcontractor shall indemnify Contractor from claims and liabilities resulting from death, bodily injury or property damage related to the acts and omissions of Subcontractor.

Brady Trane Service, Inc.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Subcontractor

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Brady \_\_\_\_\_

**Exhibit B****Subcontract Special Conditions**

1. The conduct of workmen on Owner's property must be faultless concerning students, employees, drugs, and firearms. Offending parties will be immediately removed from the site without warning – this is a **ZERO TOLERANCE** policy.
2. Appropriate clothing and PPE is required to be worn by Subcontractor's personnel whenever they are on the Owner's property. No sleeveless shirts, no shorts, and no sneakers shall be worn by Subcontractor's personnel.
3. Do not use Owner's equipment without prior approval of Brady Trane Service, Inc.
4. All Owner items moved to facilitate the installation of this project must be put back in exact location upon completion of work.
5. Subcontractor's personnel will use the restroom facilities identified for their use.
6. No fraternizing with the client's personnel, staff, etc.
7. No loud music or improper language.
8. Onsite storage may be limited by activities on Owner's property, and is permitted only with advance notice.
9. Attendance at weekly progress meetings may be required on an as-needed basis while Subcontractor is onsite.
10. Coordinate with Brady Trane Service, Inc. or security personnel when entering or leaving the client's facilities.
11. Smoking is **NOT** permitted anywhere on Owner's property.
12. Clean-up is required immediately prior to the end of every workday. Leave the work area better than found. Every effort must be made to protect Owner's existing property.
13. All demolition and disposal of material is to be in compliance with Owner, local, state and federal regulations. Facilities for disposal are the sole responsibility of the Subcontractor, and onsite accommodations for such facilities requires advance notice.
14. If use of the Owner's keys is permitted, chain of custody paperwork must be completed. Subcontractor will be responsible for all costs associated with re-keying locks and replacing keys should Subcontractor lose keys while in their custody.
15. If work is required to be performed after normal business hours, Subcontractor shall not grant access to Owner's facilities to unauthorized individuals without prior approval.

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Exhibit C

\*\*\*\*\*  
**Subcontractor's Affidavit of Payment of Debts and Claims and  
Partial & Conditional Waiver of Lien**  
\*\*\*\*\*

State of \_\_\_\_\_  
County of \_\_\_\_\_ ) ss.

\_\_\_\_\_ the undersigned subcontractor, hereby certifies that, except as listed below, all laborers and subcontractors employed by it, and all suppliers or materialmen from which it has acquired materials incorporated into the project and any lien or bond claimant relating to the undersigned's work have been paid their respective portion of prior payments and that none of such laborers, subcontractors, suppliers, materialmen, or claimant have any claim against Brady Trane Service, Inc. ("Contractor"), for damages arising in any manner in connection with the performance of the \_\_\_\_\_ (project name & description of work) through \_\_\_\_\_, for which Contractor, or the Owner or its property, might in any way be held responsible. Subcontractor further certifies that it has obtained and furnished to Contractor an Affidavit of Payment of Debts and Claims and Partial & Conditional Waiver of Lien from each of Subcontractor's subcontractors and major material or equipment suppliers furnishing labor or materials for this project. Exceptions (if none, so state):

\_\_\_\_\_

The undersigned further certifies that, upon receipt by the undersigned the sum of \_\_\_\_\_ (amount of this payment application), which sum, if in the form of a check, shall be payable to the undersigned subcontractor, and when said check has been properly endorsed by all payees and has been paid by the bank upon which it is drawn, the undersigned shall have received payment in the amount of \_\_\_\_\_ (amount paid to Subcontractor to date, including this payment) and this document shall become effective to waive and release any and all mechanic's lien, stop notice, or bond rights the undersigned has or may hereafter have in connection with the aforementioned project and all other claims the undersigned may now or hereafter have against Contractor and/or the Owner and/or its property for all materials and equipment furnished, for all work, labor, and services performed, and for all known or unknown indebtedness and claims against Contractor and/or the Owner through \_\_\_\_\_ (date through which payment is being made) for said project or related to the subcontract pursuant to which subcontractor's work was furnished.

By: \_\_\_\_\_  
\_\_\_\_\_  
(name of individual signing document)  
\_\_\_\_\_  
(title of individual signing document)

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

Brady \_\_\_\_\_





**Master Construction Subcontract**

**Exhibit D**

\*\*\*\*\*  
**Subcontractor's Affidavit of Payment of Debts and Claims and  
Final & Conditional Waiver of Lien**  
\*\*\*\*\*

State of \_\_\_\_\_ ) ss.  
County of \_\_\_\_\_

\_\_\_\_\_, the undersigned subcontractor, hereby certifies that, except as listed below, the undersigned has paid in full or has otherwise satisfied all obligations for all materials and equipment furnished, for all work, labor, and services performed, and for all indebtedness and claims against Brady Trane Service, Inc. ("Contractor"), for damages arising in any manner in connection with the performance of the \_\_\_\_\_ (*project name & description of work*) for which Contractor, or the Owner or its property, might in any way be held responsible. Subcontractor further certifies that it has obtained and furnished to Contractor an Affidavit of Payment of Debts and Claims and Final & Unconditional Waiver of Lien from each of Subcontractor's subcontractors and major material or equipment suppliers furnishing labor or materials for this project. Exceptions (*if none, so state*):

\_\_\_\_\_  
Upon receipt by the undersigned of the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (*amount of this payment application*), (and if paid by check payable to the undersigned subcontractor, when said check has been properly endorsed by all payees and has been paid by the bank upon which it is drawn) the undersigned shall have received payment in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (*amount paid to Subcontractor to date, including this payment*), and this document shall become effective to waive and release any and all mechanic's lien, stop notice, or bond rights the undersigned has or may hereafter have with respect to the aforementioned project and all other claims the undersigned may now or hereafter have against Contractor and the Owner and its property for said project or related to the subcontract described above.

\_\_\_\_\_  
(*subcontractor*)

By: \_\_\_\_\_  
\_\_\_\_\_  
(*name of individual signing document*)  
\_\_\_\_\_  
(*title of individual signing document*)

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

Brady\_\_\_\_\_