

**The Bannett Group, Ltd.,  
Master Agreement No. \_\_\_\_\_**

This **AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_  
in the year of \_\_\_\_\_, by and between the following parties, for services in connection with the Project  
identified below:

**DESIGN-BUILDER:**  
*(Name and address)*

The Bannett Group, Ltd.  
1998 Springdale Road  
Suite 101  
Cherry Hill, NJ 08003

**SUBCONTRACTOR:**  
*(Name and address)*

In consideration of the mutual covenants and obligations contained herein, Design-Builder and  
Subcontractor agree as set forth herein.

Review Only

## **Article 1**

### **General**

#### **1.1 Basic Purpose**

**1.1.1** This is a Master Agreement between Design-Builder and Subcontractor for the purpose of establishing the terms and conditions for the performance of work on multiple Projects. The parties will agree to a Scope of Work for each Project which shall identify the Project, the Owner, the Contract Documents and the commercial terms relevant to each Project. Subcontractor shall not perform Work on any Project without a written Scope of Work signed by a person authorized to do so by Design-Builder.

**1.1.2** For each Project, Design-Builder will contract with Owner to provide the services necessary for the design and construction of the Project as set forth in the Design-Build Agreement between the Design Builder and the Owner. Subcontractor, through itself, and Sub-Subcontractors, agrees to provide all construction and other aspects of the Work for each Project consistent with the Contract Documents for that Project. Design-Builder and Subcontractor agree that to the extent applicable to the performance of the Work hereunder, Subcontractor shall have the same rights, responsibilities, and obligations as to Design-Builder as Design-Builder by the Design-Build Agreement has against and to Owner, except as may be modified herein.

**1.1.3** Nothing in this Master Agreement shall require Design-Builder to enter into any Scope of Work with Subcontractor. This Master Agreement does not guarantee any minimum amount of work for Subcontractor.

#### **1.2 Basic Definitions**

**1.2.1** Terms used in this Master Agreement shall have the meanings set forth below:

**.1** *Agreement or Master Agreement* refers to this executed contract between Design-Builder and Subcontractor.

**.2** *Construction Documents* refer to the final design documents, setting forth in detail drawings and specifications describing the requirements for construction of a Project.

**.3** *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

**.4** *Design-Build Agreement* refers to the contract between Design-Builder and Owner for the design and construction of a Project, and all exhibits, attachments, and other Contract Documents enumerated and incorporated therein.

**.5** *Designer* is a qualified, licensed design professional who is an employee of Design-Builder, retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Design-Build Agreement.

**.6** *Final Completion* occurs when Subcontractor's Scope of Work pursuant to a Scope of Work is finally complete, including but not limited to the completion of all Punch List work, the successful testing and/or commissioning of all materials installed and/or equipment provided by Subcontractor, and Subcontractor's providing the documentation required pursuant to Section 7.5.1.

**.8** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

**.9** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Parties, the Project or Site, the practices involved in the Project or Site, or any Work. Legal Requirements include, but are not limited to, laws, codes, ordinances, rules, regulations, orders and decrees relating to the environment, employment, including but not limited to laws relating to harassment and discrimination, and safety on the jobsite.

**.10** *Owner's Project Criteria* is the information developed by or for Owner to describe Owner's program, requirements and objectives for a specific Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of a Design-Build Agreement. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

.11 *Project* refers to a project described in a Design-Build Agreement between Design-Builder and an Owner.

.12. *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Design-Builder's obligations to Owner.

.13 *Punch List* refers to the list generated by Design Builder at Subcontractor's notification of Substantial Completion wherein Design Builder indicates the items remaining to complete Subcontractor's Work.

.14 *Scope of Work* is a written document issued by Design-Builder and accepted by Subcontractor that establishes the Work to be performed on a Project.

.15 *Site* is the land or premises on which the Project is located.

.16 *Sub-Subcontractor* is any person or entity retained by Subcontractor as an independent contractor to perform a portion of the construction aspects of Subcontractor's Work and shall include materialmen and suppliers.

.17 *Substantial Completion* is the point at which Subcontractor's Work is sufficiently complete such that the only items remaining are Punch List activities.

.18 *Work* is comprised of all Subcontractor's construction and other services required by the Contract Documents for a Project, including procuring and furnishing all supervision, labor, inspection, testing, start-up, materials, tools, equipment, machinery, transportation, temporary utilities, temporary facilities and all other items and services reasonably inferable from this Master Agreement, a Scope of Work and the other Contract Documents necessary to complete the portion of the Project described the Scope of Work associated with that Project.

### **1.3 Contract Documents**

**1.3.1** The Contract Documents for Project will be comprised of the following:

.1 All written modifications, amendments and change orders to the Scope of Work;

.2 The Scope of Work for a Project;

.3 This Master Agreement, including all exhibits and attachments and Amendments, executed by Design-Builder and Subcontractor;

.4 The Construction Documents as set forth in a Scope of Work;

.5 The Design-Build Agreement as referenced in a Scope of Work; and

.6 The following other documents, if any: *(Identify, for example, Unit Price Schedules, Subcontractor's allowances and any other documents Design-Builder and Subcontractor elect to make a Contract Document)*

Exhibit A: Example Scope of Work

Exhibit B: Insurance Requirements

### **1.4 Interpretation and Intent**

**1.4.1** The Contract Documents for a Project are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 1.3 hereof.

### **1.5 Mutual Obligations and Acknowledgments**

**1.5.1** Design-Builder and Subcontractor commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith. Design-Builder and Subcontractor shall perform their respective responsibilities, obligations and services in a timely manner to facilitate the other's timely and efficient performance and so as not to delay or interfere with the other's performance of its obligations under this Master Agreement or the Contract Documents for a specific Project.

**1.5.2** Prior to establishing the Contract Price for a Scope of Work, Subcontractor shall fully familiarize itself with those portions of the Contract Documents and Design-Build Agreement provided by Design-Builder, as well as all documents incorporated therein and attached thereto.

### **1.6 Entire Agreement**

**1.6.1** This Master Agreement, the Scopes of Work entered into by the Parties and the documents referenced therein, form the entire agreement between Design-Builder and Subcontractor and are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## **Article 2**

### **Subcontractor's Services and Responsibilities**

#### **2.1 General**

**2.1.1** After execution of each Scope of Work, Design-Builder and Subcontractor will meet to discuss issues affecting the administration and schedule of the Work for a Project, and implement the necessary procedures, including but not limited to those relating to schedule updates, submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Scope of Work.

**2.1.2** Subcontractor's Representative shall be reasonably available to Design-Builder and shall have the necessary expertise and experience required to supervise the Work. Subcontractor's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Subcontractor. Subcontractor shall replace its Representative upon the reasonable request of Design-Builder.

**2.1.3** Subcontractor shall only communicate with Owner, Designer (if not otherwise employed by Design-Builder), or separate contractors of Design-Builder or Owner through Design-Builder.

#### **2.2 Review of Site and Contract Documents**

**2.2.1** Subcontractor shall examine the Site and the Contract Documents prior to executing each Scope of Work so as to reasonably ascertain the nature of the Work associated therewith and the various conditions affecting the Work. By entering into the Scope of Work, Subcontractor represents that the Contract Price and the Project Schedule set forth therein are sufficient to fully compensate Subcontractor, absent any Changes as allowed pursuant to the Contract Documents applicable to the Scope of Work.

**2.2.2** Subcontractor shall promptly report to Design-Builder any errors, inconsistencies, omissions, or violations of Legal Requirements Subcontractor discovers. Subcontractor shall be liable to Design-Builder for any damages resulting from any such errors, inconsistencies, omissions, or violations of Legal Requirements which Subcontractor discovers and fails to report to Design-Builder.

#### **2.3 Construction Services Generally**

**2.3.1** Subcontractor shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Scope of Work, Contract Documents and the Project Schedule.

**2.3.2** At the request of Design-Builder, Subcontractor shall attend meetings with Design-Builder, Owner, and/or separate design professionals or contractors of Design-Builder or Owner to discuss design and/or construction issues which may arise during a Project.

#### **2.4 Submittals and Substitutions**

**2.4.1** In accordance with the Contract Documents and the Project Schedule, Subcontractor shall submit for Design-Builder's review and approval submittals, including shop drawings, product data and samples. Design-Builder shall advise Subcontractor on or before the meeting required by Section 2.1.1 hereof of the submittal requirements for a Project. Any variances with the Construction Documents shall be specifically identified in Subcontractor's submittals. Design-Builder's review and approval shall not relieve Subcontractor of its responsibilities to perform the Work in accordance with the Construction Documents unless Design-Builder expressly approves in writing any such variance in its response to Subcontractor's submittals. Subcontractor shall make any necessary revisions to the submittals requested by Design-Builder.

**2.4.2** Subcontractor shall not make any substitutions in the Work or procedures or methods specified by Owner, Design-Builder or the Construction Documents for performing the Work unless it first receives written approval for such substitution from Design-Builder.

## **2.5 Sub-Subcontractors**

**2.5.1** Subcontractor shall employ only Sub-Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Subcontractor agrees that each Sub-Subcontractor shall be fully bound to Subcontractor in the same manner as Subcontractor is bound to Design-Builder for all the requirements of the Contract Documents to the extent applicable to the Sub-Subcontractor's scope of work. Subcontractor shall provide to Design-Builder a copy of any Sub-Subcontract. Subcontractor shall obtain written approval from Design-Builder for each Sub-Subcontractor and shall not subcontract with any Sub-Subcontractor to which Design-Builder has a reasonable objection.

**2.5.2** Subcontractor assumes responsibility to Design-Builder for the proper performance of the Work of Sub-Subcontractors and any acts and omissions in connection with such performance. Subcontractor shall coordinate the activities of all Sub-Subcontractors. Nothing in this Agreement is intended or deemed to relieve Subcontractor from responsibility for the work performed by its Sub-Subcontractors, or create any legal or contractual relationship between Owner or Design-Builder and any Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

## **2.6 Work of Others**

**2.6.1** Subcontractor agrees to reasonably cooperate with, and coordinate its activities so as not to interfere with, those parties performing work at the Site, including Owner's and Design-Builder's separate contractors, so that a Project can be completed in an orderly and coordinated manner without unreasonable disruption. Subcontractor shall be responsible for any increased costs incurred by Design-Builder or Owner as a result of Subcontractor's interference to the work of Owner's and Design-Builder's separate contractors.

**2.6.2** If any part of the Work depends upon other work performed by Design-Builder, or Design-Builder's or Owner's separate contractors, Subcontractor shall, prior to proceeding with that part of the Work, inspect such other work and promptly notify Design-Builder of any discovered discrepancies or defects that would render it unacceptable for the proper performance of the Work. Subcontractor shall not proceed with such part of the Work without further direction from Design-Builder. Design-Builder shall promptly

correct or cause to be corrected any such discrepancy or defect in the other work. Except to the extent such discrepancies or defects in such other work are latent, Subcontractor shall be liable for appropriate losses or damages incurred due to any discrepancies or defects in such other work not reported to Design-Builder by Subcontractor.

## **2.7 Site Cleanup**

**2.7.1** Subcontractor shall keep the Site reasonably free from debris, trash and construction wastes resulting from the performance of the Work. Upon Substantial Completion of the Work, or a portion of the Work, Subcontractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

## **2.8 Inspection**

**2.8.1** At all reasonable times, Subcontractor shall provide sufficient facilities for inspection of the Work by Design-Builder at the Site and at all locations where portions of the Work are in progress or various stages of completion. When appropriate portions of the Work are ready for inspection, Subcontractor shall notify Design-Builder.

## **2.9 Patents and Copyrights**

**2.9.1** Subcontractor shall pay all license fees and royalties due for items, materials, methods, systems or processes applicable to the Work which are subject to copyrights or patent rights and which are selected by Subcontractor.

## **2.10 Legal Requirements**

**2.10.1** Subcontractor shall perform the Work in accordance with all applicable Legal Requirements.

**2.10.2** Subcontractor shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are the responsibility of Owner or Design-Builder and related to the Work.

## **2.11 Project Safety**

**2.11.1** Subcontractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or

visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, (iii) the work of others on the Project, and (iv) all other property at the Site or adjacent thereto. Subcontractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

**2.12.2** Subcontractor is fully responsible for the safety of its Work, including but not limited to the safety of all employees of Subcontractor and Sub-Subcontractors. Subcontractor shall provide all safety equipment and training required pursuant to all Legal Requirements related to safety and shall have a representative attend all safety meetings called by Design Builder. Subcontractor shall provide to Design Builder its own Safety Plan for each Project, which shall include a description of the applicable Legal Requirements and Subcontractor's plan to meet such requirements. Subcontractor's failure to adhere to the Legal Requirements or Design Builder's safety plan shall be a material breach of this Agreement, and Subcontractor shall indemnify, defend and hold Design Builder harmless from any claims resulting from any such failure by Subcontractor.

## **2.12 Warranty**

**2.12.1** Subcontractor warrants to Design-Builder that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Subcontractor's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty or warranty required by the Contract Documents which provides Owner and/or Design-Builder with greater warranty rights than set forth in this Section 2.12 or the Contract Documents. Subcontractor will provide and, if requested, assign to Design-Builder all manufacturers' warranties upon Substantial Completion.

## **2.13 Correction of Defective Work**

**2.13.1** Subcontractor agrees to correct any Work that is found not to be in conformance with the Contract Documents, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such

longer period to the extent required by the Contract Documents.

**2.13.2** Subcontractor shall, within three (3) days of receipt of written notice from Design-Builder that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work or the Project affected by the nonconforming Work. If Subcontractor fails to commence the necessary steps within such three (3) day period, Design-Builder, in addition to any other remedies provided under the Contract Documents, may provide Subcontractor with written notice that Design-Builder will commence correction of such nonconforming Work with its own forces. If Design-Builder does perform such corrective Work, Subcontractor shall be responsible for all reasonable costs incurred by Design-Builder in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the three (3) day periods identified herein shall be deemed inapplicable.

**2.13.3** The one year period referenced above applies only to Subcontractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Design-Builder may have regarding Subcontractor's obligations under the Contract Documents.

## **2.14 Start-Up and Training**

**2.14.1** If required as part of Subcontractor's Work, Subcontractor shall be responsible for the start-up, testing, and commissioning of the Work, and shall train Owner's personnel with respect to the operation and maintenance of the Work.

## **2.15 Hazardous Conditions**

**2.15.1** Subcontractor is responsible for Hazardous Conditions introduced to the Site by itself, Sub-Subcontractors or anyone for whose acts they may be liable. Subcontractor shall indemnify, defend and hold harmless Owner, Design-Builder and their officers, directors, employees and agents from and against all claims, losses, damages, liabilities, and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Subcontractor, Sub-Subcontractors or anyone for whose acts they may

be liable. If Subcontractor creates any hazardous condition on the site, Subcontractor shall immediately correct or remove such hazardous condition, at Subcontractor's sole cost and expense, so that the hazardous condition no longer exists. If, after notice from Design-Builder, the condition is not immediately corrected or removed, Design-Builder may correct or remove such condition and charge the cost to do so back to Subcontractor.

## **2.16 Miscellaneous**

**2.16.1** The services by Subcontractor shall be performed by people with the requisite skill and experience to perform the Work, and Subcontractor shall provide sufficient manpower so as to perform the Work within the Project Schedule. If, in Design Builder's opinion, Subcontractor is not providing sufficient manpower to complete the Work within the Project Schedule, Design Builder shall provide written notification to Subcontractor of such failure. If Subcontractor does not remedy the failure within three (3) days, Design Builder shall provide such manpower and shall backcharge the cost to Subcontractor.

**2.16.2** If Design Builder has a reasonable objection to any person performing the Work, Subcontractor shall replace such person at no cost to Design Builder. Subcontractor shall comply with all rules and requirements established by Design Builder with respect to labor relations or cooperation among Design Builder's separate contractors. Failure to do so shall be a material breach of this Agreement.

## **Article 3**

### **Design-Builder's Services and Responsibilities**

#### **3.1 Timely Reviews and Approvals**

**3.1.1** Design-Builder shall provide timely reviews and approvals of all submittals, consistent with the turnaround times set forth in the Project Schedule, or as agreed to by the parties at the meeting required under Section 2.1.1 hereof.

#### **3.2 Design-Builder's Representative**

**3.2.1** Design-Builder's Representative shall be responsible for providing Design-Builder-supplied information and approvals in a timely manner to permit Subcontractor to fulfill its obligations under the Contract Documents.

### **3.3 Furnishing of Services and Information**

**3.3.1** Unless expressly stated to the contrary in the Scope of Work or the Contract Documents, and to the extent Design-Builder has received such items from Owner, Design-Builder shall provide for Subcontractor's information the items listed below. Design-Builder does not warrant the accuracy or completeness of such items provided, however, that Subcontractor is entitled to rely on these items to the same extent Design-Builder is entitled to rely upon such items in the Design-Build Agreement:

**.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

**.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

**.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper construction of the Project and enable Subcontractor to perform the Work;

**.4** A legal description of the Site;

**.5** As-built and record drawings of any existing structures at the Site;

**.6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;

**.7** Owner's Project Criteria;

**.8** All permits, approvals, and licenses set forth in the Owner's Permit List attached as an exhibit to the Design-Build Agreement; and

**.9** Test and inspection reports.

**3.3.2** Design-Builder shall provide Subcontractor with the Project Schedule and appropriate updates thereto.

#### **3.4 Notification of Errors**

**3.4.1** Design-Builder shall notify

Subcontractor of any errors, inconsistencies, or omissions Design-Builder discovers in the Work. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement or the Scope of Work shall relieve Subcontractor of responsibility for errors, inconsistencies, or omissions in the Work.

### **3.5 Review and Approval of Submittals**

**3.5.1** Design-Builder shall review and approve submittals, including shop drawings, product data and samples, submitted by Subcontractor. Design-Builder's review and approval of submittals shall be only for the purpose of confirming general conformance with the Construction Documents and shall not relieve Subcontractor of its responsibilities to perform the Work in accordance with the Construction Documents unless Design-Builder expressly approves in writing any such variance in its response to Subcontractor's submittals. If revisions are necessary to a submittal prior to Design-Builder's approval, Design-Builder shall inform Subcontractor of any such necessary revisions.

## **Article 4**

### **Ownership of Work Product**

#### **4.1 Work Product**

**4.1.1** The Subcontractor shall have no ownership and property rights in any drawings, specifications, and other documents and electronic data ("Work Product") furnished by Design-Builder to Subcontractor under this Agreement. Design-Builder shall be granted ownership of all Work Product, if any, furnished by Subcontractor to Design-Builder under this Agreement. Subcontractor shall not use the Work Product furnished to them on any other project.

#### **4.2 Confidential and/or Proprietary Information**

**4.2.1** The information received by Subcontractor from Design Builder is confidential and/or proprietary to either Design Builder or to Owner. Subcontractor agrees to maintain the confidential nature of such information and to execute any such additional agreements as may be required by Owner or Design-Builder with respect to maintaining the confidentiality of such information.

## **Article 5**

### **Time of Performance**

#### **5.1 Date of Commencement**

**5.1.1** The Work shall commence five (5) days after Subcontractor's receipt of Design-Builder's Notice to Proceed for a Project ("Date of Commencement") unless the parties mutually agree otherwise in writing.

#### **5.2 Time of Completion**

**5.2.1** Subcontractor shall achieve Substantial Completion of the Work by the date set forth in the Project Schedule and/or in the Scope of Work. ("Project Schedule") Subcontractor shall diligently and continuously prosecute and complete the Work in accordance with the Project Schedule as it may be revised and issued from time to time during the performance of the Work, and any other scheduling requirements listed in the Contract Documents.

**5.2.2** Subcontractor shall participate and cooperate in the development of schedules and other efforts to achieve timely completion of the Work. Subcontractor shall provide Design-Builder information for the scheduling of the times and sequence of operations required for the Work to meet Design-Builder's overall schedule requirements, shall continuously monitor the Project Schedule, including any revisions thereto, so as to be fully familiar with the timing, phasing and sequence of operation of the Work and of other work on the Project, and shall execute the Work in accordance with the requirements of the Project Schedule including any revisions thereto.

**5.2.3** Subcontractor shall timely perform the various stages of the Work so that Design-Builder can achieve the dates set forth in the Project Schedule, including any revisions thereto. If Subcontractor fails to perform its work in a timely fashion or if Design-Builder has a reasonable belief that Subcontractor cannot complete the Work within the Project Schedule, Design Builder may, after three (3) days' notice and an opportunity to cure, provide such additional forces as it deems necessary and charge the cost of such forces back to Subcontractor.

**5.2.4** Subcontractor shall achieve Final Completion within ten (10) days of the date of Substantial Completion. If Subcontractor fails to achieve Final Completion within this ten (10) day

time frame, Design Builder has the option to immediately terminate this Agreement for cause, complete the Work with such forces as Design Builder reasonably determines is necessary and charge the cost back to Subcontractor.

### **5.3 Time is of the Essence**

**5.3.1** Design-Builder and Subcontractor mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents and the Project Schedule.

### **5.4 Delays to the Work**

**5.4.1** If Subcontractor is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Subcontractor is responsible, the time for performance shall be extended by Change Order by the number of days that Subcontractor's critical path schedule is actually delayed. By way of example, events that may entitle Subcontractor to an extension of the time for completion of the work include acts or omissions of Design-Builder, Owner or anyone under Design-Builder's or Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

**5.4.2** In addition to Subcontractor's right to a time extension for those events set forth in Section 5.4.1 above, Subcontractor shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in Section 5.4.1 above that are beyond the control of Subcontractor, Owner and Design-Builder, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

**5.4.3** Notwithstanding any other provision to the contrary, any delay and resulting damages that arise out of, or relate to, problems caused by Owner or for which Owner is responsible shall be resolved pursuant to Article 13 hereof.

**5.4.4** If the Project is delayed due to the Subcontractor or anyone for whom Subcontractor is responsible, and not due to Design-Builder or Owner, Subcontractor shall compensate Design

Builder for its costs, damages and expenses arising from such delay and shall indemnify, defend and hold Design-Builder harmless for all claims arising from such delay, including but not limited to any liquidated damages or other damages that Owner may assess against Design-Builder which are attributable to Subcontractor or anyone for whom Subcontractor is responsible. In addition, Subcontractor shall, at the direction of Design-Builder and at Subcontractor's own cost and expense, work such overtime and take such other measures as may be necessary to make up for all time lost in the completion of the project due to such delay. Design Builder may, in addition to any other remedies that it may have, complete Subcontractor's Work with such forces as it deems necessary to maintain the Project Schedule.

## **Article 6**

### **Contract Price**

#### **6.1 Contract Price**

**6.1.1** The Contract Price shall be set forth in the Scope of Work for each project and shall be subject to adjustments made in accordance with the Contract Documents. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements. Design-Builder is not responsible for Subcontractor's bidding or estimating mistakes or miscalculation of market conditions. . The Contract Price shall not change without a written Change Order signed by a representative authorized by Design Builder to agree to Change Orders.

## **Article 7**

### **Procedure for Payment**

#### **7.1 Schedule of Values**

**7.1.1** Within the time specified by Design Builder and for each Scope of Work, Subcontractor shall submit for Design-Builder's review and approval a schedule of values for all of the Work described in the Scope of Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Subcontractor throughout the Work.

## **7.2 Progress Payments**

**7.2.1** Beginning with the first month after the Date of Commencement, Subcontractor shall submit on the twenty fifth (25th) day of each month for Design-Builder's review and approval, Subcontractor's Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be in a form acceptable to Design-Builder and accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.1 hereof. Design-Builder will submit Subcontractor's proper Application for Payment to Owner with Design-Builder's Application.

**7.2.2** The Application for Payment may not request payment for equipment and materials not yet incorporated into the Project unless Subcontractor obtains Design-Builder's prior written approval and (i) Design-Builder is satisfied that the equipment and materials are suitably stored at either the Site or another location acceptable to Design Builder, (ii) the equipment and materials are protected by suitable insurance, and (iii) upon payment, Design-Builder will receive the equipment and materials free and clear of all liens and encumbrances.

**7.2.3** The Application for Payment shall constitute Subcontractor's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.

**7.2.4** Design-Builder shall make payment on Subcontractor's properly submitted and accurate Application for Payment within forty five (45) days after Design-Builder's receipt of payment from Owner on account of Subcontractor's monthly Application for Payment or such sooner time as required by law, but in each case less the total of payments previously made, and less amounts properly withheld under this Agreement.

## **7.3 Retainage on Progress Payments**

**7.3.1** Design-Builder will retain from each of Subcontractor's Application for Payment ten percent (10%). Unless mutually agreed otherwise between the parties, retainage will be included in Design-Builder's final payment to Subcontractor, provided 1) Subcontractor achieved Final Completion within ten (10) days of the date of Substantial Completion; 2) Design-Builder has received such retained amounts from Owner and 3) Design Builder has received all documentation required pursuant to Section 7.5.2.

## **7.4 Withholding of Payments**

**7.4.1** If Design-Builder determines that Subcontractor is not entitled to all or part of an Application for Payment, it will notify Subcontractor in writing. The notice shall indicate the specific amounts Design-Builder intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Subcontractor must take to rectify Design-Builder's concerns. In addition to any other reason allowed pursuant to this Agreement, Design Builder may withhold payments for the following reasons:

- .1 Material breach of this Agreement;
- .2 Defective work or work not in compliance with the Contract Documents;
- .3 Design Builder's reasonable assessment that the Work cannot be completed within the Project Schedule or for the Contract Price;
- .4 Third party claims filed or reasonable evidence that such claims will be filed;
- .5 Failure of Subcontractor to pay lower tier subcontractors, suppliers and/or employees;
- .6 Failure of Subcontractor to achieve Final Completion within ten (10) days of Substantial Completion; or
- .7 Violation of any Legal Requirements

Design-Builder and Subcontractor will attempt to resolve Design-Builder's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder shall pay Subcontractor

the uncontested amount of the Application for Payment, and Subcontractor may pursue its rights under the Contract Documents, including those under Article 13 hereof.

## **7.5 Final Payment**

**7.5.1** Subcontractor shall submit its Final Application for Payment to Design-Builder in accordance with Section 7.5.2 below. Design-Builder shall make payment on Subcontractor's properly submitted and accurate Final Application for Payment within ten (10) days after Design-Builder's receipt of final payment from Owner on account of Subcontractor's properly submitted Final Application for Payment, provided also that Subcontractor has satisfied the requirements for final payment set forth in Section 7.5.2 below and no reasons for withholding exist.

**7.5.2** At the time of submission of its Final Application for Payment, Subcontractor shall provide the following information:

**.1** an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Design-Builder's or Owner's interests;

**.2** a general release executed by Subcontractor waiving, upon receipt of final payment by Subcontractor, all claims, except those claims previously made in writing to Design-Builder and remaining unsettled at the time of final payment;

**.3** consent of Subcontractor's surety, if any, to final payment;

**.4** all operating manuals, warranties and other deliverables required by the Contract Documents; and

**.5** certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

**7.5.3** Upon making final payment, Design-Builder waives all claims against Subcontractor except claims relating to (i) Subcontractor's failure to satisfy its payment obligations, if such failure affects Design-Builder's or Owner's interests; (ii) Subcontractor's failure to complete the Work consistent with the Contract Documents, including

defects appearing after final completion of the Work; and (iii) the terms of any special warranties required by the Contract Documents.

**7.5.4** Upon accepting final payment, Subcontractor waives all claims against Design Builder except those previously made in writing and identified as unsettled at the time of the Final Application for Payment.

## **7.6 Payment Not Acceptance**

**7.6.1** No payment to Subcontractor under this Agreement shall be evidence of, or construed to be, acceptance of defective, faulty, improper or non-conforming work.

## **7.7 Subcontractor's Payment Obligations**

**7.7.1** Subcontractor will pay its Sub-Subcontractors, Suppliers and employees, in accordance with its contractual obligations to such parties, all the amounts Subcontractor has received from Design-Builder on account of their work. Subcontractor will impose similar requirements on its Sub-Subcontractors to pay those parties with whom they have contracted.

## **7.8 Record Keeping and Finance Controls**

**7.8.1** With respect to changes in the Work performed on a cost basis by Subcontractor pursuant to the Contract Documents, Subcontractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after final payment of the Work, Design-Builder and Design-Builder's accountants shall be afforded access from time to time, upon reasonable notice, to Subcontractor's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Subcontractor shall preserve for a period of three (3) years after final payment.

## **Article 8**

### **Stop Work and Termination**

#### **8.1 Design-Builder's Right To Stop Work**

**8.1.1** Design-Builder may, without cause and for its convenience, order Subcontractor in writing to stop and suspend the Work on a Scope of Work or on this Master Agreement. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

**8.1.2** Subcontractor is entitled to seek an adjustment of the Contract Price and/or times for completion of the Work if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of work by Design-Builder. Notwithstanding anything to the contrary herein, if Design-Builder's suspension of the Work is the result of Owner's suspension of the Design-Builder's work under the Design-Build Agreement, then Design-Builder shall pay Subcontractor only those amounts Design-Builder actually receives from Owner on account of the Work.

#### **8.2 Design-Builder's Right to Terminate for Convenience**

**8.2.1** Upon ten (10) days' written notice to Subcontractor, Design-Builder may, for its convenience and without cause, elect to terminate either this Master Agreement or a Specific Scope of Work. In the event that a Scope of Work is terminated, Design-Builder shall have the right to use the existing Work Product for that Scope of Work for purposes of completing the Project, and shall pay Subcontractor for the following:

- .1** All Work executed and for proven loss, cost or expense in connection with the Work;
- .2** The reasonable costs and expenses attributable to such termination, including amounts due in settlement of terminated contracts with Sub-Subcontractors; and
- .3** The fair and reasonable sums for overhead and profit on the sum of items .1 and .2 above.

**8.2.2** If Design-Builder's termination of Subcontractor for convenience is the result of Owner's termination of Design-Builder for convenience under the Design-Build Agreement, then Design-Builder shall pay Subcontractor only

those amounts Design-Builder actually receives from Owner on behalf of Subcontractor.

#### **8.3 Design-Builder's Right to Terminate for Cause**

**8.3.1** If Subcontractor persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, its Sub-Subcontractors, Suppliers or employees, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed in accordance with the Project Schedule, as such schedule may be adjusted, or (vi) perform material obligations under the Contract Documents, then Design-Builder shall have the rights, in addition to any other rights and remedies provided in the Contract Documents or by law, set forth in Sections 8.3.2 and 8.3.3 below. If Subcontractor fails to achieve Final Completion pursuant to Section 5.2.4, Design Builder may immediately terminate this Master Agreement and/or any specific Scope of Work, and Design Builder shall have the rights set forth in Sections 5.2.4 and 8.3.3.

**8.3.2** Upon the occurrence of an event set forth in Section 8.3.1 above, Design-Builder may provide written notice to Subcontractor that it intends to terminate this Master Agreement and/or a Scope of Work unless the problem cited is cured, or commenced to be cured, within three (3) days of Subcontractor's receipt of such notice. If Subcontractor fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare this Master Agreement and/or Scope of Work terminated for default by providing written notice to Subcontractor of such declaration.

Notwithstanding the above, Design-Builder may immediately terminate either the Master Agreement or an individual Scope of Work if Subcontractor violates any Legal Requirements, including but not limited to any Legal Requirements related to Safety.

**8.3.3** Upon declaring the Master Agreement and/or a Scope of Work terminated for cause, Design-Builder may enter upon the premises and take possession, for the purpose of completing any and all Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Subcontractor hereby transfers, assigns and sets over to Design-Builder for such purpose, and to employ any person or persons to complete the

Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Subcontractor shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price associated with a Scope of Work exceeds the cost and expense incurred by Design-Builder in completing the Scope of Work, such excess shall be paid by Design-Builder to Subcontractor. If Design-Builder's cost and expense of completing the Scope of Work exceeds the unpaid balance of the Contract Price for the Scope of Work, then Subcontractor shall be obligated to pay the difference to Design-Builder. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expenses, including attorneys' fees and expenses, incurred by Design-Builder in connection with the procurement and defense of claims arising from Subcontractor's default, subject to the waiver of consequential damages set forth in Section 13 hereof.

**8.3.4** If Design-Builder improperly terminates the Master Agreement and/or a Scope of Work for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 8.2 of the Agreement.

#### **8.4 Subcontractor's Right To Stop Work**

**8.4.1** If with respect to a Scope of Work (i) Owner fails to pay amounts due Design-Builder under the Design-Build Agreement for Work performed by Subcontractor, such failure is not due to the fault of Subcontractor, and Subcontractor has not been paid such amounts due, or (ii) Design-Builder fails to pay any amounts due Subcontractor under this Agreement, Subcontractor may, in addition to any other rights afforded under the Contract Documents or at law, stop work in accordance with Section 8.4.2.

**8.4.2** Subcontractor shall provide Design-Builder with written notice that Subcontractor will stop work unless said failure to pay the amount is not cured within seven (7) days from Design-Builder's receipt of Subcontractor's notice. If Design-Builder does not cure the problem within such seven (7) day period, Subcontractor may stop work. In such case, Subcontractor shall be entitled to make a claim for adjustment to the Contract Price and the times for completion of the

Work to the extent it has been adversely impacted by such stoppage. To the extent Design-Builder's failure to pay is related to a dispute between the parties, the dispute will be resolved in accordance with Article 13 and the parties will continue performance in accordance with Section 13.3.

#### **8.5 Subcontractor's Right to Terminate For Cause**

**8.5.1** Subcontractor, in addition to any other rights and remedies afforded under the Contract Documents or at law, may terminate a Scope of Work for cause in accordance with Section 8.5.2 below if Design-Builder fails to cure the problems set forth in Section 8.4.1 above within thirty (30) days after Subcontractor has stopped the work.

**8.5.2** Upon the occurrence of the event set forth in Section 8.5.1 above, Subcontractor may provide written notice to Design-Builder that it intends to terminate the Scope of Work unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Subcontractor may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Subcontractor may declare the Scope of Work terminated for default by providing written notice to Design-Builder of such declaration. In such case, Subcontractor shall be entitled to recover in the same manner as if Design-Builder had terminated the Scope of Work for its convenience under Section 8.2 of the Agreement.

#### **8.6 Bankruptcy of Design-Builder or Subcontractor**

**8.6.1** If either Design-Builder or Subcontractor institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event:

**.1** The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided

within ten (10) days after receiving notice of the request; and

.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 8.

**8.6.2** The rights and remedies under Section 8.6.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

## **8.7 Effect of Termination of Master Agreement**

**8.7.1** If this Master Agreement is terminated, then each Scope of Work entered into pursuant to this Master Agreement is likewise terminated, except to the extent that the Scope of Work has been completed or that warranties, indemnification obligations, and terms and conditions of either the Master Agreement or a Scope of Work survive the termination.

## **Article 9**

### **Representatives of the Parties**

#### **9.1 Design-Builder's Representatives**

**9.1.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for signing Change Orders and avoiding and resolving disputes under Article of the Agreement: *(Identify individual's name, title, address and telephone numbers)*

**9.1.2** Design-Builder shall designate in each Scope of Work an individual as its Design-Builder's Representative, which individual will have the authority and responsibility set forth in Section 3.2 of the Agreement:

#### **9.2 Subcontractor's Representatives**

**9.2.1** Subcontractor designates the individual listed below as its Senior Representative ("Subcontractor's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Article 13 of the Agreement: *(Identify individual's name, title, address and telephone numbers)*

**9.2.2** Subcontractor shall designate in each Scope of Work an individual as its Subcontractor's Representative, which individual will have the authority and responsibility set forth in Section 2.1.2 of the Agreement:

## **Article 10**

### **Insurance and Bonds**

#### **10.1 Subcontractor's Insurance Requirements**

**10.1.1** Subcontractor is responsible for procuring and maintaining, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in Exhibit B, with the minimum ratings set forth in Exhibit B, for certain claims which may arise from or out of the performance of this Master Agreement and obligations under the Scopes of Work or the Contract Documents associated therewith. Subcontractor shall obtain such insurance at the time this Master Agreement is entered into and shall confirm that it has maintained such coverage prior to the performance of any Work under a Scope of Work. If a Scope of Work requires additional or different coverages, such additional requirements shall be set forth in the Scope of Work, and Subcontractor shall obtain such insurance prior to starting work with respect to the Scope of Work.

**10.1.2** Subcontractor shall require its Sub-Subcontractors to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in Exhibit B prior to performing any Work on a Scope of work.

**10.1.3** Subcontractor's and its Sub-Subcontractors' insurance coverage set forth in Exhibit B shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

**10.1.4** Prior to commencing any services under any Scope of Work, Subcontractor shall provide Design-Builder with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Scope of Work and/or the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Upon request by Design Builder, Subcontractor shall provide a copy of any and all policies relating to insurance required under this Agreement and any claims history associated with such policy.

**10.1.5** Except as otherwise stated in Exhibit B, the insurance policies required herein shall list Design-Builder, Owner, and any other entities required by the Scope of work or the Contract Documents, if any, as an additional insured.

## **10.2 Property Insurance**

**10.2.1** In accordance with the Scope of Work and/or the Contract Documents, Owner or Design-Builder shall procure and maintain property insurance upon the entire Project.

## **10.3 Waiver of Subrogation**

**10.3.1** Design-Builder and Subcontractor waive against each other and Owner, Sub-Subcontractors, Designer, Owner's or Design-Builder's separate contractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Subcontractor shall, where appropriate, require similar waivers of subrogation from Designer, and Sub-Subcontractors and separate contractors of Design-Builder, and shall require each of them to include similar waivers in their contracts.

# **Article 11**

## **Indemnification**

### **11.1 Patent and Copyright Infringement**

**11.1.1** Subcontractor shall defend any action or proceeding brought against Owner or Design-Builder based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Design-Builder shall give prompt written notice to Subcontractor of any such action or

proceeding and will reasonably provide authority, information and assistance in the defense of same. Subcontractor shall indemnify, defend and hold harmless Owner and Design-Builder from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Subcontractor agrees to keep Design-Builder informed of all developments in the defense of such actions.

**11.1.2** If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Subcontractor shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Subcontractor cannot so procure such right within a reasonable time, Subcontractor shall promptly, at Subcontractor's option and at Subcontractor's expense, (i) modify the Work so as to avoid infringement of any patents, or copyrights, or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright, but only to the extent that Owner provides to Design Builder defense and indemnification for a tax claim.

**11.1.3** Sections 11.1.1 and 11.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating to a particular process or product of a particular manufacturer specified by Owner or Design-Builder or (ii) arising from modifications to the Work by Owner or Design-Builder after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Design-Builder shall defend, indemnify and hold harmless Subcontractor to the same extent Subcontractor is obligated to defend, indemnify and hold harmless Design-Builder in Section 11.1.1 above.

**11.1.4** The obligations set forth in this Section 11.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

### **11.2 Tax Claim Indemnification**

**11.2.1** If, in accordance with Design-Builder's direction, an exemption for all or part of the Work is claimed for taxes, Design-Builder shall indemnify, defend and hold harmless Subcontractor from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Subcontractor as a result of any action taken by

Subcontractor in accordance with Design-Builder's directive.

### **11.3 Payment Claim Indemnification**

**11.3.1** Subcontractor shall indemnify, defend and hold harmless Owner and Design-Builder from any claims or mechanic's liens brought against Owner, Design-Builder, or against the Project as a result of the failure of Subcontractor, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for, or in connection with the Work. Within three (3) days of receiving written notice from Design-Builder that such a claim or mechanic's lien has been filed, Subcontractor shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Subcontractor fails to do so, Design-Builder will have the right to discharge the claim or lien and hold Subcontractor liable for costs and expenses incurred, including attorneys' fees.

### **11.4 Subcontractor's General Indemnification**

**11.4.1** Subcontractor, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, Design-Builder, their officers, directors, employees and agents from and against claims, losses, damages, and liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction to real and personal property of any kind whatsoever, sustained by any person or persons, whether employees of the Subcontractor or not, caused by, resulting from, arising out of or occurring in connection with the performance of the Work together with any Change Orders or additions to the work included in the Scope of Work. Subcontractor agrees that the obligation to defend, indemnify and hold harmless as described above exists whether such injuries to persons or damage to property are due or are claimed to be due to the negligence of Design Builder or the Owner or the agents, servants and employees thereof, excepting from the foregoing the sole and complete negligence of a party indemnified hereunder. The obligation to defend commences when a claim is made against Design Builder or Owner, even if Subcontractor disputes its obligation to indemnify, defend and hold harmless. The defense shall be provided through counsel chosen by the Design Builder and/or the Owner. Subcontractor agrees to pay for the defense of the Design-Builder and/or Owner upon demand.

**Master Agreement Between  
The Bannett Group, Ltd., and Subcontractor**

**11.4.2** If an employee of Subcontractor, Sub-Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.4.1 above, Subcontractor's indemnity obligation set forth in Section 11.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Subcontractor, Sub-Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

### **11.5 Survival, Indemnification Provisions Specifically Negotiated.**

**11.5.1** The indemnification provisions of this Master Agreement shall survive the termination of the Master Agreement or any Scope of Work.

**11.5.2** The indemnification provisions of this Agreement were specifically negotiated between the parties.

## **Article 12**

### **Changes to the Contract Price and Time**

#### **12.1 Owner-Generated Changes**

**12.1.1** Changes to the Work issued by Design-Builder shall be governed by the provisions set forth in the following sections of this Article 12. . If Owner issues changes affecting the Work, Subcontractor shall only be entitled to adjustments in its Contract Price and the times for completion of the Work attributable to such Owner-generated changes to the extent Design-Builder actually receives such adjustments from Owner.

#### **12.2 Change Orders**

**12.2.1** A Change Order is a written instrument issued after execution of the Agreement signed by Design-Builder and Subcontractor, stating their agreement upon all of the following:

- .1** The scope of the change in the Work;
- .2** The amount of the adjustment to the Contract Price; and
- .3** The extent of the adjustment to the times for completion of the Work.

**12.2.2** All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Design-Builder and Subcontractor shall negotiate, in good faith and as expeditiously as possible, the appropriate adjustments for such changes. Change Orders must be in writing and signed by an authorized representative of Design-Builder.

### **12.3 Work Change Directives**

**12.3.1** A Work Change Directive is a written order prepared and signed by Design-Builder, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the times for completion of the Work.

**12.3.2** Design-Builder and Subcontractor shall negotiate, in good faith and as expeditiously as possible, the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

### **12.4 Contract Price Adjustment**

**12.4.1** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by agreement between the parties and shall be based on the actual costs of the change of the Work, including reasonable overhead and profit.

**12.4.2** If Design-Builder and Subcontractor disagree upon whether Subcontractor is entitled to be paid for any services required by Design-Builder, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Design-Builder and Subcontractor shall resolve the disagreement pursuant to Article 13 hereof.

### **12.5 Emergencies**

**12.7.1** In any emergency affecting the safety of persons and/or property, Subcontractor shall act, at its discretion unless otherwise directed by the Design-Builder, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or times for completion of the Work on account of emergency work shall be determined as provided in this Article 12.

## **Article 13**

### **Contract Adjustments and Disputes**

#### **13.1 Requests for Contract Adjustments and Relief**

**13.1.1** If either Subcontractor or Design-Builder believes that it is entitled to relief against the other for any event arising out of or related to the Work or the Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall be in accordance with specific notice requirements contained in applicable sections of the Contract Documents and shall be made prior to incurring any cost or expense. Subcontractor shall provide Design-Builder written notice of claims for which Owner may be responsible in sufficient time for Design-Builder to meet its notice requirements to Owner set forth in the Contract Documents. Subcontractor shall review the documentation requirements in the Design Build Agreement and shall comply with such documentation requirements when submitting its claim to the Design Builder. Subcontractor shall provide written notice within a reasonable time, not to exceed ten (10) days, after the occurrence giving rise to the claim for relief or after Subcontractor reasonably should have recognized the event or condition giving rise to the request, whichever is later. Failure of Subcontractor to provide timely notice shall constitute a waiver of such claim, but only to the extent that the Design-Builder is materially prejudiced as a result of the untimely notice.

#### **13.2 Dispute Avoidance and Resolution**

**13.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Subcontractor and Design-Builder each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

**13.2.2** The parties will first attempt to resolve such claim, dispute or controversy at the field level through discussions between Design-Builder's Senior Representative and Subcontractor's Senior Representative.

**13.2.3** If after meeting the Senior Representatives determine that the claim, dispute

or controversy cannot be resolved on terms satisfactory to both parties, the parties shall submit the claim, dispute or controversy to good faith non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Persons with authority to resolve the dispute shall be present at the mediation.

**13.2.4** If the parties cannot resolve the dispute through mediation, the parties shall resolve the dispute through litigation; however, at the Design Builder's option, any dispute between Design Builder and Subcontractor may be determined through the dispute resolution provision set forth in a Design Build Agreement associated with a Scope of Work, and Subcontractor shall accept, as full resolution of any Claim, the amounts received from Owner that are associated with Subcontractor's Claim. In such case, such dispute resolution procedure shall be Subcontractor's sole means of recovery against Design Builder.

**13.2.4** The substantially prevailing party in any final, binding dispute proceeding upon which the parties may agree, including but not limited to litigation, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party. In determining the substantially prevailing party, the official presiding over the final, binding dispute proceeding shall consider the successful defense of claims.

### **13.3 Duty to Continue Performance**

**13.3.1** Unless provided to the contrary in the Contract Documents, Subcontractor shall continue to perform the Work and Design-Builder shall continue to satisfy its payment obligations to Subcontractor, pending the final resolution of any dispute or disagreement between Design-Builder and Subcontractor.

### **13.4 CONSEQUENTIAL DAMAGES**

**13.4.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 13.4.2 BELOW), NEITHER DESIGN-BUILDER NOR SUBCONTRACTOR SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES,**  
Master Agreement Between  
The Bennett Group, Ltd., and Subcontractor

**WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.**

**13.4.2** Notwithstanding Section 13.4.1 above, Design-Builder shall be entitled to recover against Subcontractor (i) any liquidated damages that Owner may assess against Design-Builder which are attributable to Subcontractor, even though both parties recognize that such liquidated damages may include some damages that might otherwise be deemed to be consequential and (ii) consequential damages that may be imposed upon the Design-Builder by the Design-Build Agreement.

## **Article 14 Miscellaneous**

### **14.1 Assignment**

**14.1.1** Neither Subcontractor nor Design-Builder shall, without the written consent of the other, assign, transfer or sublet any portion or part of the this Master Agreement, a Scope of Work or the obligations required by the Contract Documents.

### **14.2 Successorship**

**14.2.1** Design-Builder and Subcontractor intend that the provisions of the Master Agreement, individual Scopes of Work and the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

### **14.3 Governing Law**

**14.3.1** The Master Agreement, Scopes of Work and all Contract Documents shall be governed by the laws of the place of a Project, without giving effect to its conflict of law principles.

### **14.4 Severability**

**14.4.1** If any provision or any part of a provision of this Master Agreement, a Scope of work or the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the

remaining provision or parts of the provision of the Master Agreement, the Scope of Work or the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

#### **14.5 No Waiver**

**14.5.1** The failure of either Design-Builder or Subcontractor to insist, in any one or more instances, on the performance of any of the obligations required by the other under this Master Agreement, a Scope of Work or the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

#### **14.6 Headings**

**14.6.1** The headings used in this Master Agreement, a Scope of Work or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

#### **14.7 Notice**

**14.7.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

#### **14.8 Amendments**

**14.8.1** Neither this Master Agreement, any individual Scope of Work or the Contract Documents may be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

#### **14.9 Survival**

**14.9.1** Subcontractor's obligations under this Master Agreement and all Scopes of Work shall not be released, and shall specifically survive, the completion of all services hereunder by Subcontractor, final payment to Subcontractor, and the termination of this Agreement for any reason.

### **Article 15**

#### **Other Provisions**

**15.1** Other provisions, if any, are as follows:  
*(Insert any additional provisions)*

**15.1** Neither this Agreement nor any Scopes of Work may be recorded. In the event that this Master Agreement or any Scope of Work is recorded by the Subcontractor or anyone on their behalf, then all payments due hereunder shall cease to be due and owing until the Design Builder is satisfied that no encumbrances have or can be placed against the Project as a result of said recording.

In executing this Agreement, Design-Builder and Subcontractor each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the Work described herein.

**DESIGN-BUILDER:**

**SUBCONTRACTOR:**

\_\_\_\_\_  
*The Bannett Group, Ltd.*

\_\_\_\_\_  
*(Name of Subcontractor)*

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

*(Signature)*

Scott Bannett  
Its President

\_\_\_\_\_  
*(Signature)*

Printed Name: \_\_\_\_\_

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

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

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

**Review Only**