



MASTER SUBCONTRACT AGREEMENT

This Agreement is effective on the date of acceptance ("Effective Date"), and entered into between NCS Construction Services, LLC, a Michigan limited liability company ("Contractor"), and Subcontractor.

The Subcontractor agree as follows:

1. SUBCONTRACT WORK.

- 1.1. Requirements. Subcontractor will perform the identified work (the "Subcontract Work") in accordance with the following documents: (1) this Agreement and its exhibits; (2) the written authorization by which Contractor engages Subcontractor for a project and given scope of work (the "Work Authorization"); (3) the project plans and specifications; and (4) any Change Orders as defined in this Agreement (altogether, the "Subcontract Agreement").
- 1.2. No Separate Contracts. The Subcontractor Agreement will not be construed to create a contractual relationship of any kind between any persons or entities other than Contractor and Subcontractor. **Subcontractor will not contract with Owner, Owner's agents, or any sub-subcontractor relating to the Subcontract Work without prior written consent of Contractor.**
- 1.3. Conflict of Documents. In the event of a conflict of provisions in the Subcontract Agreement, provisions addressing conflict in the prime contract between Owner and Contractor (the "Prime Contract") will apply. If there is no such provision, the plans will control over the specifications, and the provisions in the Work Authorization will control over this Agreement. For purposes of the Subcontract Agreement, specifications include written requirements appearing on the plans regarding materials, equipment, systems, and workmanship.

2. SUBCONTRACTOR PERFORMANCE.

- 2.1. Scheduling. Subcontractor will cooperate with scheduling by directing and supervising the Subcontract Work and providing progress reports, drawings, product data, and samples as needed. Subcontractor will follow Contractor's schedule and directions and will complete the Subcontract Work in a timely manner to avoid construction delays. If the Subcontract Work is delayed by Subcontractor's failure to timely perform and Contractor is compelled to secure materials and/or labor elsewhere, Subcontractor will be responsible for whatever loss, expense, or damage from such failure. Should scheduling be changed by order of Contractor or Owner, Subcontractor will (1) proceed as directed by Contractor, except in case of delays caused by acts of God, general strikes, or by Owner; (2) cooperate and not interfere with the work of Contractor or of other subcontractors; and (3) provide additional shifts and overtime necessary to fulfill the schedule. Claims regarding changes to the time schedule will be made pursuant to Section 3.2 of this Agreement.
- 2.2. Materials, Equipment, and Labor. Subcontractor will furnish and pay for all materials, equipment, and labor used in connection with the performance of the Subcontract Work and furnish satisfactory evidence, when requested by Contractor, to verify compliance with the

Subcontract Agreement. Subcontractor will employ only competent, careful, and orderly persons. Upon notification by Contractor that the conduct of any person employed by Subcontractor is unsatisfactory, Subcontractor will remove such person from the jobsite.

- 2.3. Prior Inspection; Corrections. Subcontractor will inspect work areas and notify Contractor of defects before starting the Subcontract Work. Subcontractor will be responsible for failure to perform due to prior defects in work areas where the Subcontract Work was performed if the defects were reasonably discoverable and Subcontractor failed to object before starting the Subcontract Work. Subcontractor will promptly correct any nonconforming Subcontract Work, and costs incurred for the corrections will be paid by Subcontractor.
- 2.4. Warranty. Subcontractor warrants to Contractor that materials and equipment furnished under the Subcontract Agreement will be new and of good quality, unless the Subcontract Agreement provides for otherwise. Subcontractor further warrants that the Subcontract Work will conform with the requirements of the Subcontract Agreement and with industry standards and codes. This warranty includes conforming work free of defects, except those inherent in the quality of the Subcontract Work required or permitted by the Subcontract Agreement. This warranty excludes remedy for damage or defect caused by alterations not executed by Subcontractor, improper operation, improper or insufficient maintenance, or normal wear and tear.
- 2.5. Permits, Fees, and Licenses; Legal Compliance. Subcontractor will obtain, pay for, and furnish to Contractor the permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Subcontract Work. Subcontractor will be responsible for and comply with federal, state, and local laws, including without limitation, tax laws regarding income, sales and use, social security, Medicare, unemployment, and workers' compensation, as applicable to the performance of the Subcontract Work. Subcontractor will indemnify Contractor for any loss or expense incurred by Subcontractor's failure of its obligations under this Section.
- 2.6. Cleaning Up; Safety Procedures; Notification of Injury. Subcontractor will keep the premises and surrounding area free of waste materials or rubbish caused by the Subcontract Work. Subcontractor will follow applicable laws, statutes, ordinances, codes, rules, and regulations for safety of persons and property and will continuously inspect all work, materials, and equipment to discover and correct unsafe conditions. Subcontractor will notify Contractor immediately of an onsite injury to an employee or agent of Subcontractor.
- 2.7. Insurance. Prior to starting the Subcontract Work, Subcontractor and all sub-subcontractors hired by Subcontractor will furnish to Contractor certificates of insurance evidencing the required insurance coverages as set forth in Exhibit A, which will be maintained at all times during the Subcontract Work and if not will result in removal from the jobsite and suspension of all payments. Contractor and Subcontractor waive all rights against each other and other subcontractors, sub-subcontractors, Owner, and Owner's agents, each of the other, for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance provided under the Prime Contract or other property insurance applicable to the Subcontract Work or to property at or adjacent to the jobsite, except such rights as they may have to proceeds of such insurance held by Owner as fiduciary.
- 2.8. Indemnification. Subcontractor will indemnify, defend, and hold Contractor, Owner, and their respective employees, officers, directors, and affiliates harmless from any loss, cost, expense, or damage claimed by third parties for property damage and/or bodily injury, including death, to the proportionate extent such loss, cost, expense, or damage arises from the negligence or willful misconduct of Subcontractor, its employees, officers, or directors in

connection with the Subcontract Work. This indemnity obligation will not be limited by a limitation on the amount or type of amounts payable under workers' compensation, disability, or other employee benefits. Subcontractor's indemnity obligation does not include any Indemnatee's sole negligence.

3. CHANGES TO WORK.

- 3.1. Change Orders. Subcontractor may be ordered in writing by Contractor, without invalidating the Subcontract Agreement, to make additions, deletions, or other revisions, including changes required by Owner modifications to the Prime Contract, if changes are made within the general scope of the Subcontract Work, with costs and schedule adjusted accordingly ("Change Order"). **Subcontractor will not undertake any changes to the Subcontract Work unless authorized in a Change Order.**
- 3.2. Claims for Change Orders. Only before starting changed work may Subcontractor submit in writing to Contractor any claim for extra compensation pursuant to this Section and the terms of the Prime Contract. Subcontractor will not be entitled to damages from delay or disruption. A claim by Subcontractor which will affect or become part of a claim that Contractor is required to make under the Prime Contract within a specified time period or specified manner will be made by Subcontractor in sufficient time to permit Contractor to satisfy these requirements. Such claims will be received by Contractor not less than two (2) working days preceding the time by which Contractor's claim must be made or otherwise Subcontractor will be bound to the same consequences as those to which Contractor is bound under the Prime Contract.

4. SUBCONTRACT PRICE AND PAYMENT.

- 4.1. Total Sum. The price set forth in the Work Authorization, along with additions or subtractions in any Change Order, will be deemed to be full compensation for the Subcontract Work furnished by Subcontractor (the "Subcontract Sum"). Subcontractor will not be entitled to extra compensation unless authorized in a Change Order.
- 4.2. Progress Payments. Subcontractor will submit a schedule of values allocating the Subcontract Sum over the Subcontract Work, and each application for payment will be based upon the most recent schedule supported by sworn statements, lien waivers, and such other documentation required by Contractor. Applications for payment will be provided to Contractor no later than the 20th day of a month, projecting costs to the end of month, and failure to do so may result in Subcontract Work not being included in that month's submission for payment to Owner. Based on provided applications for payment, Contractor will make progress payments on account of the Subcontract Sum to Subcontractor.
- 4.3. Pay-If-Paid. Receipt of payment by Contractor from Owner for the Subcontract Work is a condition precedent to payment by Contractor to Subcontractor, and Subcontractor hereby acknowledges that it will rely on the credit of Owner, not Contractor, for payment of the Subcontract Work. Contractor will not be responsible for Owner cancellations or delays in schedule.
- 4.4. Final Payment. As a condition to final payment, Subcontractor will provide Contractor with all full conditional waivers, drawings, vendor warranties, product data, manuals, and samples related to the Subcontract Work. Subcontractor, if required, will submit evidence satisfactory to Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor Work have been satisfied. Acceptance of final payment by Subcontractor will constitute a waiver of claims by Subcontractor, except those previously made in writing and identified by Subcontractor as unsettled.

5. TERMINATION.

- 5.1. Termination by Subcontractor. Subcontractor may terminate the Subcontract Agreement for nonpayment of amount due for sixty (60) days or longer for which Subcontractor is not at fault.
- 5.2. Termination by Contractor. If Subcontractor fails or neglects to perform the Subcontract. Work or fails or neglects to perform in accordance with the Subcontract Agreement and within ten (10) days' notice of said failure Subcontractor continues to fail or neglect correction of the noticed failure, Contractor may, by notice to Subcontractor and without prejudice to any other remedy Contractor may have, terminate the Subcontract Agreement and finish the Subcontract Work by whatever method Contractor deems necessary. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontract Work and other damages incurred, such excess will be paid to Subcontractor. If such expenses and damages exceed the unpaid balance of the Subcontract Sum, Subcontractor will pay the difference to Contractor.
- 5.3. Termination by Owner. Upon receipt of notice of Owner termination, Subcontractor will (1) cease operations as directed by Contractor; (2) take actions necessary, or that Contract may direct, for the protection and preservation of the Subcontract Work; and (3) except for the Subcontract Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing sub-subcontracts and purchase orders and enter into no further sub-subcontracts and purchase orders.

6. MISCELLANEOUS.

- 6.1. Enforcement and Interpretation. Time is of the essence in the Subcontract Agreement. The Subcontract Agreement shall be governed by the laws of Michigan. If any part of the Subcontract Agreement is declared unenforceable or invalid, the remainder of the Subcontract Agreement will continue to be valid and enforceable. Any waiver by either party for the other's failure to perform any provision of the Subcontract Agreement is not a waiver of the right to subsequently insist on performance or pursue any remedy for that failure. Any notice required under the Subcontract Agreement will be in writing and deemed received on the date of delivery. Headings are inserted for the convenience of the parties only and will not be considered when interpreting the Subcontract Agreement. The Subcontract Agreement may be executed in counterparts.
- 6.2. Waiver of Consequential Damages. The parties mutually waive claims for consequential damages arising out of or relating to the Subcontract Agreement.
- 6.3. Dispute Resolution. No claims, disputes, or other matters in controversy arising out of or relating to the Subcontract Agreement will be subject to arbitration without prior written consent of both parties. Subject to applicable arbitration rules, the parties may include by joinder the other in outside arbitration, provided that (1) the party sought to be joined has substantial involvement in a common question of law or fact such that their presence is required if complete relief is to be accorded in arbitration; and (2) the party sought to be joined consents in writing to the joinder.
- 6.4. Assignment. The Subcontract Agreement will not be assigned either in whole or in part by any party without the written consent of the other.
- 6.5. Entire Agreement. The Subcontract Agreement constitutes the entire agreement between the parties and supersedes all prior communications, contracts, or agreements between these parties with respect to the subject matter addressed in the Subcontract Agreement,

whether oral or written. The Subcontract Agreement cannot be modified in any way except by Change Order or written amendment signed by the parties.

BY SIGNING THE WORK AUTHORIZATION, THE PARTIES ARE SIGNING ON THE EFFECTIVE DATE AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

EXHIBIT A

INSURANCE REQUIREMENTS

Subcontractor and sub-subcontractors will maintain all insurance coverages indicated below.

Attached to each certificate of insurance will be a copy of the Additional Insured Endorsement that is part of the commercial general liability policy.

1. **Commercial General Liability (CGL)**

- (a) Limits of Insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.
- (b) Per Project Aggregate will apply separately to each project.
- (c) CGL coverage will be written on ISO Occurrence Form CG 00 01 10 01 or equivalent form and will cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
- (d) Contractor and Owner will be included as insureds, using ISO Additional Insured Endorsement CG 20 10 11 85 or equivalent form to each additional insured. This insurance for the additional insureds will be as broad as the coverage provided for named insured Subcontractor.
- (e) Coverage will apply to each additional insured on a primary and non-contributing basis before any other insurance or self-insurance, including any deductible, maintained by or provided to the additional insureds.
- (f) Subcontractor will maintain CGL coverage for itself and each additional insured for the duration of the project and maintain Completed Operations coverage for itself and the additional insureds for at least 3 years after completion of Work.
- (g) Certificate and the insurance policy will contain a provision that coverage will not be cancelled or allowed to expire until 30 days' prior written notice has been given to Contractor.
- (h) Insurance policy will not prohibit waiver of subrogation, which will be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, (2) even though that person or entity did not directly or indirectly pay the insurance premium, or (3) whether or not that person or entity had an insurable interest in the property damaged.

2. **Business Automobile Liability**

- (a) Limits of Insurance of not less than \$1,000,000 each accident.
- (b) Business Automobile coverage will include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
- (c) Contractor and Owner will be included as insureds on the automobile policy.
- (d) Certificate and insurance policy will contain a provision that coverage will not be cancelled or allowed to expire until 30 days' prior written notice has been given to Contractor.

- (f) Commercial Umbrella Limits of Insurance of not less than \$1,000,000.
- (g) Umbrella coverage will include as insureds all entities that are additional insureds on commercial general liability.
- (h) Coverage will apply for each additional insured on a primary and non-contributing basis before any other insurance or self-insurance, including any deductible, maintained by or provided to the additional insureds other than the CGL, Automobile Liability and Employer Liability Coverage maintained by Subcontractor.
- (i) Certificate and insurance policy will contain a provision that coverage will not be cancelled or allowed to expire until 30 days' prior written notice has been given to Contractor. Insurance policy will not prohibit waiver of subrogation, which will be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, (2) even though that person or entity did not directly or indirectly pay the insurance premium, or (3) whether or not that person or entity had an insurable interest in the property damaged.

3. Workers Compensation and Employers Liability

- (a) Limits of Insurance of at least \$500,000 each accident for bodily injury by accident and \$500,000 each employee for injury by disease.
- (b) Where applicable, U.S. Longshore and Harbor Workers Compensation Act Endorsement will be attached to the policy.
- (c) Where applicable, the Maritime Coverage Endorsement will be attached to the policy.
- (d) Certificate and insurance policy will contain a provision that coverage will not be cancelled or allowed to expire until 30 days' prior written notice has been given to Contractor.