MAXX BUILDERS
MASTER AGREEMENT

# DEFINITIONS

## As used herein, the following terms shall have the meanings indicated:

“Architect” means the architect or engineer employed by Owner, or any other person authorized by the General Contract to act on Owner’s behalf or to direct or pass upon any matter or thing connected with the performance of the General Contract or Subcontract thereof.

“Contract Documents” means (i) the General Contract, (ii) all general, supplementary and other conditions applicable to the Project, (iii) the Drawings and Specifications, (iv) all bulletins and addenda issued in connection with the Project, including any amendments thereto, (v) all standards, requirements, or conditions incorporated into the Contract Documents by reference, and (vi) all changes or revisions to these which may occur during the Project. (vii.) all subsequent work orders and subcontract agreements signed as per individual project specifications.

 “Drawings and Specifications” means the drawings and specifications described in the Contract Documents and all addenda and/or revisions thereto.

“General Contract” means that contract executed or to be executed by Owner and Contractor in connection with the construction of the Project, including any amendments thereto, including the Contract Documents.

“Owner” means the Owner described above or designated Owner’s representative.

‘Project” means the Project identified above.

“Substantial Completion” means the time when the Project (or a separate part of it) is ready for occupancy or use for its intended purpose. Subcontractor agrees that the terms of the Contract Documents (and Owner or Architect’s determinations or interpretations) concerning Substantial Completion will be binding on Subcontractor.

“Final Acceptance” means the time when the Project (or a separate part of it) is completed and accepted by Owner. Subcontractor agrees that the terms of the Contract Documents (and Owner or Architect’s determinations or interpretations) concerning final acceptance will be binding on Subcontractor.

## To the extent that Subcontractor agrees in this Subcontract to save, keep, and hold Contractor harmless or to indemnify Contractor, or provide insurance to protect or indemnify Contractor, such provision(s) will extend to Contractor’s employees, officers, directors, agents and other representatives, and all indemnities of Contractor.

# CONTRACT DOCUMENTS

## Subcontractor represents to Contractor that Subcontractor has carefully reviewed this Subcontract, the Project site, all of the Contract Documents and all documents made available to bidders. Subcontractor represents that it understands and agrees to the scope of the undertaking under this Subcontract’s Scope of Work. Based on this, Subcontractor represents that it fully understands and can perform all of Subcontractor’s responsibilities under this Subcontract and the Contract Documents.

## Subcontractor has found no ambiguities in the Contract Documents nor any documents made available to bidders, and Subcontractor has no unanswered questions. In the event that Subcontractor discovers any ambiguities or potential ambiguities in the Contract Documents, Subcontractor shall immediately call these to the attention of Contractor in writing.

## Subcontractor agrees that Subcontractor’s failure to bring any ambiguities or potential ambiguities to the attention of Contractor in writing shall constitute a waiver of any claims Subcontractor might otherwise have. Subcontractor agrees that Contractor shall pass on any notice of ambiguities or potential ambiguities to Owner and Subcontractor shall be bound by the determination by Owner or Architect to the same extent that Contractor is bound.

## The Contract Documents are binding upon Subcontractor to the same extent they are binding on Contractor. Subcontractor will perform all work, give all notices, and conduct all business arising out of or relating to this Subcontract in accordance with the provisions of this Subcontract and the provisions of the Contract Documents; the Contract Documents apply to Subcontractor’s relationship with Contractor to the same extent that Contractor is bound to Owner.

## In the event of a direct and irreconcilable conflict between the Contract Documents and this Subcontract, this Subcontract shall govern. In no event shall Subcontractor be entitled to greater rights, higher entitlements, or more relief against Contractor than Contractor actually obtains from Owner on Subcontractor’s behalf with respect to the Subcontract’s Scope of Work.

## Subcontractor agrees to comply with and not violate any term, covenant, or condition of the General Contract, including, but not limited to, any provisions regarding (a) nondiscrimination in employment; (b) Davis-Bacon Act; (c) Contract Work Hours Standards Act; (d) apprentices; (e) payroll records and payroll; (f) Copeland (Anti-Kickback) Act: non-rebate of wages; (g) withholding of funds to assure wage payment; (h) termination of subcontract; and (i) Buy-American Act.

# PROVISION OF LABOR AND MATERIALS

## Subcontractor will fully perform this Subcontract Agreement, and will furnish and pay for all labor and supervision, tools, apparatus, supplies, equipment, and services, and will also furnish, deliver, install, and pay for all materials as necessary for the performance and completion of the work as needed and described under the Scope of Work, free from all claims, including claims of materialmen, suppliers, laborers, labor organizations, unions, truckers, subcontractors, and others making claims through Subcontractor. Subcontractor will submit daily reports through communication to project superintendents and via available work logs. At all times that Subcontractor has personnel at the Project site, Subcontractor shall also have present an authorized representative of Subcontractor who shall supervise and direct Subcontractor’s personnel and be responsible for Subcontractor’s actions. Such Subcontractor’s representative shall be authorized to act on behalf of Subcontractor and communications to such representative shall be binding upon Subcontractor.

## Subcontractor represents that it is expert in the particular line or lines of work contracted to be done and that Subcontractor is competent to know the materials, methods and apparatus specified for this work which are sufficient and suitable to secure the results contemplated by the Contract Documents. Subcontractor will fulfill the requirements of the Contract Documents. Subcontractor will follow the Contract Documents strictly. If Subcontractor believes that conflicts or discrepancies make the Contract Documents inadequate or unsuitable to accomplish the desired results, then Subcontractor shall notify Contractor immediately in writing. In such case Subcontractor shall follow written directions given by Contractor. If Subcontractor fails to notify Contractor of conflicts or discrepancies before performing the work, then Subcontractor waives any claims it might otherwise have relating to such conflicts or discrepancies.

## Subcontractor will cooperate in carrying out Contractor’s quality assurance program including, but not limited to, furnishing necessary documentation and facilitating inspections and quality checks.

## Subcontractor represents that Subcontractor is qualified to do business in the Project(s) State.

## Subcontractor represents that Subcontractor has (or will obtain) all permits and licenses necessary to perform this Subcontract, including all special or trade permits necessary to complete the work.

## Before commencing work, Subcontractor will check the work performed by others and report in writing to Contractor any defect, interference, or non-conformity in the work of others or in the plans and specifications. Except to the extent Subcontractor reports defects, interferences, or non-conformities in writing, Subcontractor accepts the work performed by others. If cutting, patching, rerouting, or replacement of work is necessary because of prior work by others, Subcontractor agrees that it will bear the cost which Contractor incurs to overcome or to correct the same.

## Subcontractor shall be responsible for coordinating with and obtaining all required inspections of its work from local and other governing agencies. Before concealing the work of others, Subcontractor shall ascertain whether Subcontractor or others have had their work inspected and approved. Subcontractor shall not conceal any work of others that has not been inspected.

## Contractor (or Owner) shall employ and pay for the services of the independent testing agency. Subcontractor shall coordinate its work with the agency for all specified testing and inspection. All cost of any re-inspections (including costs of Owner and costs of Contractor as calculated in Article 6(j) of this Subcontract) due to the fault of Subcontractor shall be deducted from the Subcontract amount. Unless otherwise noted within its Contract, Subcontractor shall be responsible for all cutting and patching as required to properly complete its work. All cutting and patching shall be in accordance with the specifications.

## Unless otherwise noted, Subcontractor shall provide all power cords as necessary to distribute temporary power (provided by Contractor) to its work. Subcontractor may have to provide a generator, if needed, when performing work within the general site outside of the building construction. All electrically operated equipment must be equipped with GFI (ground fault interrupter) and all other safety devices.

## Contractor shall provide minimum temporary heating and/or cooling as necessary to properly install work or to protect installed work, unless otherwise noted. Heat and/or cooling will not be provided for the purpose of producing a comfortable working environment.

## Owner may or may not have separate general contractors performing work on this project. Subcontractor shall fully cooperate with and coordinate through Contractor Subcontractor’s work with all such other contractors, subcontractors, and suppliers.

## Subcontractor is responsible for taking all necessary measures to protect others, including pedestrians, workers, property at the site, traffic and adjacent structures, from harm which might result from Subcontractor’s performance of the Scope of Work.

## Subcontractor represents that Subcontractor is aware that equipment, tools, supplies or materials which are not intended to be incorporated into the work are not covered by the builder’s risk policy in place for the Project, and Subcontractor agrees to be responsible for all such equipment, tools, supplies or materials.

## Subcontractor recognizes that Contractor may have certain Property Insurance coverage for equipment, supplies or materials intended for use in the Project. Subcontractor agrees to be responsible for the risk of loss or damage to such material or equipment to the extent that this risk is i) not covered by insurance in place or ii) subject in whole or in part to a deductible in Contractor’s insurance coverage. Subcontractor therefore remains responsible for proper storage and protection of equipment, tools, supplies and materials (to the same extent that Contractor is responsible to Owner) until Owner accepts Subcontractor’s work.

## Subcontractor agrees to protect its own work and the work and materials installed by others on the Project, and that if Subcontractor damages work or materials installed by other subcontractors, Subcontractor will be responsible for all costs (including Contractor’s costs and attorney fees) or delays caused by Subcontractor’s failure to protect work of others.

## If work or materials are damaged or lost (and not insured), Subcontractor agrees to resolve any claims of responsibility for such loss or damage with other Subcontractors or suppliers who are responsible for such loss as directed by Contractor. If Subcontractor cannot resolve such responsibility with other subcontractors, then the Subcontractor agrees that Contractor may elect to have Subcontractor resolve responsibility with other subcontractors or suppliers in the manner described in Article 14(c).

## Subcontractor represents, warrants and guarantees its work and materials to the full extent required by law and the Contract Documents. Without limiting this responsibility, or any other liability of Subcontractor, Subcontractor warrants workmanship and materials furnished to be free from defects or faults and that when completed, the work performed by Subcontractor shall be in strict accordance with the Contract Documents, and all applicable codes. Subcontractor agrees to be responsible for any damages arising there from.

## Subcontractor shall promptly remove and replace any workmanship, material or equipment which Contractor, Owner, or Architect determines is unsound, defective, or improper. Should Owner (or Contractor) elect to accept defective or non-conforming work or materials, Contractor may require an appropriate and equitable adjustment in the amount of this Subcontract to the extent required of Contractor by Owner (or to the extent deemed appropriate by Contractor).

## Unless otherwise agreed upon, Subcontractor shall be responsible for all handling of materials at the job site, including, but not limited to, hoisting, deliveries, transportation, unloading, storing and safekeeping. Subcontractor agrees to pay all freight, storage, taxes, or other incidental expenses associated with Subcontractor’s materials. All materials stored at the job site shall be at the risk of Subcontractor unless otherwise agreed upon in writing. Contractor assumes no responsibility or liability for materials received or stored by Subcontractor and, unless otherwise agreed in writing, Subcontractor assumes full responsibility for loss or damage of any nature to its equipment while in use or stored at the job site.

 (t) Subcontractor shall be an independent contractor under this Subcontract Agreement and shall assume all of the rights, obligations and liabilities, applicable to any such independent contractor hereunder. Notwithstanding any provisions in this Subcontract Agreement which may appear to give Contractor the right to exercise a measure of control over the work, (the means, methods or details of doing the work herein covered or to exercise a measure of control over the work) such provisions shall be deemed to mean that Subcontractor shall follow the desires of Contractor in the results of the work only.

# DILIGENT PERFORMANCE

## Subcontractor will commence, pursue diligently, complete the work and all requirements of this Subcontract Agreement in such sequence (and order) and according to such schedules as Contractor shall establish from time to time during the course of the work. Subcontractor shall perform the work so as not to delay any other trades or contractors, Subcontractor understands that time is of the essence in the performance of this Subcontract. Any written dates for performance furnished by Subcontractor and approved by Contractor or Owner for delivery of materials, samples, shop drawings, etc., shall become a part of this Subcontract. Subcontractor shall immediately notify Contractor in writing of any interruption on the job or late delivery which causes or may cause a delay in Subcontractor’s performance. No extension of the completion date shall be permitted unless approved in writing by Contractor and Owner, and Subcontractor shall be responsible for any losses or damages incurred as a result of delays in completing its work. At no additional cost to Contractor, unless approved in advance, Subcontractor shall work overtime or increase manpower if deemed necessary, in the judgment of Contractor, to maintain the progress of the work. Any such overtime or shift work required to maintain progress or to complete the work on a timely basis shall be at Subcontractor’s expense and shall not be charged to Contractor unless specifically authorized in writing by Contractor prior to the commencement of such overtime or shift work.

## Subcontractor agrees that the schedule for completion of the Project takes priority over the scheduling of Subcontractor’s work. Subcontractor represents that (i) Subcontractor has carefully reviewed Contractor’s latest project schedule; (ii) the times and sequences shown in that schedule for Subcontractor’s work are reasonable and will be satisfactory to Subcontractor; (iii) Subcontractor understands that this Schedule is subject to change during the course of the Project; and (iv) that Subcontractor will (at Contractor’s request) modify the schedule or sequence of Subcontractor’s work and the work of other subcontractors and suppliers so as to cooperate with all other trades on the Project (without any additional cost to Contractor or other trades) and to facilitate Contractor’s overall performance of the Project within the Schedule and the completion date(s) set forth in the Contract Documents.

## If Subcontractor’s work is delayed for any reason beyond Subcontractor’s control, Subcontractor will immediately notify Contractor’s Superintendent (verbally) and Contractor’s Project Manager (in writing) of the reasons for the delay and the activities which are affected. Subcontractor agrees that any claim for extra time will set forth the circumstances on which such claim is based, including the reasons Subcontractor claims to be entitled to additional time, the activity(ies) which is (are) delayed, daily logs or other evidence showing such delays, the circumstances causing such delay, and the specific consequences of the delay to Subcontractor. Subcontractor will make any claims arising out of such delays in accordance with the provisions of Article 6; the provisions of this Article 4; and this Subcontract shall govern such claims.

## If Subcontractor’s forces (including without limitation, Staff, Workers, Trades, Vendors, Suppliers) are not able to complete a 40-hour work week by the close of regular business on Friday (for any reason including weather), Subcontractor shall continue to perform during the weekend so that its forces will work 40 hours during that week (to the maximum extent possible) without any additional charge under this Subcontract.

## Contractor shall have the right at any time to delay or suspend the Project or any part thereof for any reasonable time and if this happens, Subcontractor’s sole remedy for such delays or suspensions shall be an extension of time. Contractor shall not be independently liable to Subcontractor for any delay or interference caused by circumstances beyond Contractor’s control (or delay or interference caused by Owner, Architect, other subcontractors or suppliers or other persons), except as follows: In the event that Contractor obtains additional compensation from Owner or others for delay or interference, Subcontractor shall be entitled to share in such additional compensation as determined in Contractor’s judgment. Subcontractor’s share of such additional compensation shall be calculated only on the basis of Subcontractor’s direct costs and will exclude any indirect costs (such as lost opportunity, impaired bonding capacity, lost profits, or extended home office overhead). Subcontractor hereby waives any rights and remedies for additional compensation due to such delays, any such payments by the Contractor shall be completely discretionary.

## Subcontractor shall fully cooperate with Contractor and promptly provide any information requested by Contractor in connection with preparation and revision of the schedules for the Project, including (without limitation) detailed information concerning the sequence, beginning and ending dates of activities, cost breakdowns related to such activities, and any information requested for Critical Path Method scheduling if used for the Project.

## Subcontractor will promptly perform all work required after the Project achieves Substantial Completion (as that term may be defined in the Contract Documents or by Owner). Subcontractor will perform this work (including completion of any punch list items) so that the Project and all other work on any Punch List required for completion can be completed within the time allowed within the Contract Documents or by Owner or Architect (or within 30 days after Substantial Completion, whichever is shorter).In the event Subcontractor does not perform timely, Subcontractor will be responsible for any delay damages, including without limitation, any utility costs, any damages imposed on Contractor by Owner, and Contractor’s supervisory costs, (all to be billed in accordance with the provisions of Article 6(J)), or such portion of those costs as Subcontractor has caused to be incurred.

## If Subcontractor delays any of Contractor’s work, or any work on the Project, Subcontractor shall be responsible for all such damages caused or related thereto. Subcontractor’s liability to Contractor shall include Contractor’s additional costs, (as computed in accordance with Article 6(J)) and any additional damages suffered by Contractor. (including liquidated damages imposed by Owner or other claims by Subcontractors) Provided, however, that in the event such disputes are between Subcontractor and other subcontractors and suppliers, Contractor may elect to have these parties work out their disputes in accordance with the provisions of Article 14(c).

## If Contractor determines that Subcontractor is not timely in performing any of Subcontractor’s work or that Subcontractor is not keeping up with the current schedule, Contractor may request Subcontractor to prepare and present a Recovery Schedule for Subcontractor’s work. In such event Subcontractor will prepare a Recovery schedule in such form and detail as Contractor may request. Subcontractor further agrees to work as necessary to meet the requirements of the Recovery Schedule and bring Subcontractor’s work into compliance with the current Project Schedule (all without any additional cost under this Subcontract).

## Subcontractor will cooperate and deal fairly with Contractor in all respects to the benefit of the Project in order to allow Contractor to meet the intent and purposes set forth in the Contract Documents. Contractor may assign any and all express and implied warranties given by Subcontractor to Owner, without notice to Subcontractor.

# PAYMENT

## Contractor will pay Subcontractor for the performance of its work hereunder the Subcontract Amount (identified in the Subcontract), as may be adjusted to the actual number of units furnished by Subcontractor, in accordance with the Subcontract and its General Provisions. The Subcontract Amount shall (unless otherwise specified) include all taxes, insurance premiums, charges for permits and all other fees and charges, and shall be firm and binding on Subcontractor for the work and shall not be conditioned upon a firm completion date or on any labor increases or material escalation of costs which might occur during the course of construction.

## Payment of the Subcontract Amount shall be made as follows: Contractor shall, subject to the provisions of this Subcontract and Article 5(d), pay to Subcontractor an amount equal to the value of the work performed by Subcontractor (less retainage in the amount identified in Article 5(c)) as determined by Architect (or Owner) and approved by Contractor during any calendar month within seven (7) calendar days after payment therefore has been received by Contractor from Owner.

## Contractor will withhold **10% retainage** from progress payments from each pay application. If Owner reduces retainage in its payments to Contractor, Contractor shall similarly reduce retainage for payments to Subcontractor, provided however that Contractor may deduct funds described in Article 5(g).

## Contractor shall be under no obligation to make any payment to Subcontractor (under any provision of this Subcontract) except to the extent that Contractor has received funds from Owner for the work invoiced by Subcontractor; that is to say, Subcontractor shall not be entitled to payment if for any reason (including Owner’s financial situation or lack of available funds) Owner fails to pay Contractor in accordance with the General Contract. **Payment from Owner is a condition precedent to any obligation of Contractor to pay Subcontractor.** If advanced payment is approved, it will only be made directly to the vendor. Subcontractor hereby acknowledges and agrees that it is the intention of Contractor and Subcontractor that Subcontractor bear the risk of nonpayment if for any reason Owner fails to pay Contractor. Subcontractor further acknowledges that in the event of nonpayment by Owner, the law grants Subcontractor various lien and other rights by which it may seek payment.

## At or after Substantial Completion of the work (as that term is defined in the Contract Documents or as that term is interpreted by Owner or Architect) Contractor may release additional sums reflecting the value of the work performed by Subcontractor as determined by Architect and approved by Contractor to the extent such payments are received from Owner, subject to the other provisions of this Article (including Article 5 (g)) and Subcontractor’s performance of the work under this Subcontract.

## The balance of contract funds (final payment), less offsets of Contractor, shall be payable seven (7) days after the last of the following: i) the Project is completed; ii) the Project is accepted by Owner and Architect; iii) Owner pays the full contract price to Contractor; and (iv) Subcontractor has fully performed all of its obligations hereunder, including the furnishing of close-out documents.

## Before paying any amount due to Subcontractor, Contractor is authorized to deduct (or offset) an amount equal to 110% of (i) any and all sums or obligations which Subcontractor owes to Contractor, (ii) costs necessary to complete and/or correct the work to be performed under this Subcontract, (iii) any amounts Contractor deems necessary (in its sole judgment) to reserve in order to protect Contractor or others against claims made regarding Subcontractor’s work or payments claimed due by sub-subcontractors or suppliers to Subcontractor, and (iv) any and all liabilities or claims (liquidated or unliquidated), which Contractor has or may have against Subcontractor, arising (a) under or relating to the Subcontract (including delay damages per Article 4(g) and 4(h) or, (b) under any other contract or agreement between Subcontractor and Contractor relating to the Project or any other project, or, (c) from any other liability or obligation of Subcontractor to Contractor arising from the Project or any other project.

## **Subcontractor will submit to Contractor applications for payment by the 21st of each month, or earlier, so as to enable Contractor to apply for payment from Owner as provided for in the Contract Documents**. Subcontractor’s application for payment must use the form identified as Subcontract Attachment #5, together with any other forms Owner or Contractor may require during the course of the Project. Payments will be due upon a Net-30 basis, or upon receiving payment by the Owner, as further stipulated in Article 5 (d). However, payment applications must first be approved by project Field Staff in order to confirm completion percentage. If Subcontractor fails to submit its applications for payment by the **21st of each month** (or by other date required), then the Subcontractor shall forfeit its entitlement to payment for that month’s pay application (Unless Contractor is able to obtain the funds from Owner in spite of Subcontractor’s late application). Only originals of the pay applications will be processed for payment.

## Subcontractor shall accept payments made to Subcontractor as being made in trust, for the benefit of Subcontractor’s sub-subcontractors and suppliers who have performed the work which made such payments possible. Subcontractor shall promptly use payments made by Contractor to pay its subcontractors and suppliers. Subcontractor shall promptly make certain that all of its subcontractors and suppliers (at any tier) are paid for all work performed, all materials and all equipment supplied, to the same extent (and in the same percentage) as Subcontractor has been paid. Subcontractor shall sign and provide Contractor with releases in the form of Attachment #6 (or Attachment # 7 for final payment).

## **As a condition precedent to the payment of any amount due Subcontractor**, Contractor may require Subcontractor to (i) produce a list of all sub-subcontractors and suppliers, along with the amount of each subcontract, purchase order or other contract; (ii) produce a sworn affidavit listing the information in Article 5(j)(i) above; (iii) produce waivers of mechanics lien rights (and/or Bond claim rights) by Subcontractor and by all persons supplying labor or materials or equipment to Subcontractor on the job through the date of requisition, amid/or (iv) provide such other evidence as Contractor may require that charges for all labor and material have been paid. Contractor may check with Subcontractor’s suppliers and subcontractors (at any tier) to determine the current status of indebtedness or other financial information concerning Subcontractor and may at Contractor’s discretion make checks payable jointly to Subcontractor and its supplier(s) or subcontractor(s) or directly to the supplier or subcontractor for the account of Subcontractor.

## Each time Subcontractor pays its subcontractors, material suppliers, or equipment vendors, Subcontractor shall clearly note on each payment check that it is paying for work or materials or equipment provided pursuant to this Subcontract for this Project (by name).

## No payment by Contractor to Subcontractor or for its account shall relieve Subcontractor of its obligation to perform all of its obligations under this Subcontract in accordance with this Subcontract and the Contract Documents. Monthly or other interim payments to Subcontractor do not prove (or otherwise reflect) that the work paid for has been performed properly or timely or iii accordance with the Contract Documents. No payment to Subcontractor shall prevent Contractor from enforcing its right to have Subcontractor perform the work in proper quality, timing or sequence, and no payment shall prevent Contractor from enforcing its right to have Subcontractor remove and/or replace any defective work, or prevent Contractor from enforcing its right to supplement Contractor’s work or to enforce such other remedies as are provided for under this Subcontract.

## Subcontractor shall provide Contractor with a Schedule of Values with the signed copy of this Agreement. Subcontractor understands that Contractor, Owner and/or Architect may require revisions to the Schedule of Values. ***If requested, Subcontractor agrees to provide revisions to its Schedule of Values. If Subcontractor fails to provide a schedule of values (or fails to make revisions required by Contractor, Owner, and/or Architect) Contractor may create (or revise) a Schedule of Values for Subcontractor to use in billings.*** Subcontractor shall use the schedule of values in its Pay Applications. ***Subcontractor agrees that if it fails to use the schedule of values in its pay applications, Contractor may i) decline to bill Subcontractor’s work or ii) bill Subcontractor’s work to Owner (and distribute Owner payments to Subcontractor) using a Schedule of Values which Contractor creates****.*

## Contractor may from time to time withhold any money otherwise due Subcontractor for work performed on the Project, on account of any default or damages caused in whole or in part by Subcontractor to Contractor or those to whom Contractor may be liable on this or any other project. Contractor has, without exclusion of any other remedy at law or in equity, complete rights of offset, and such funds so withheld under any bona fide claim or dispute shall not be considered trust funds for the benefit of Subcontractor or claimants for whom Subcontractor is responsible. There are no third party beneficiaries of this Subcontract.

# EXTRA WORK AND OMITTED WORK

## In the event that Contractor directs Subcontractor to perform extra or additional work, Subcontractor will promptly perform and diligently complete such work whether or not Contractor and Subcontractor have agreed on the cost of such work. Subcontractor shall submit to Contractor a lump sum proposal for such work (before beginning work). This proposal shall include a detailed cost breakdown for each component of the work, indicating both quantities and unit prices, and such proposal shall be submitted to Contractor not later than 10 calendar days after such proposal is requested by Contractor. All work must be quoted as per the approved Construction Documents. Any missed information will fall upon Subcontractor to complete within the agreed upon price, not subject to escalation, unless it is to be categorized as change order either as a result of city requirement, owner suggestion, or any other change in plans as approved by the Contractor and Owner.If a lump sum price or unit price for the extra work cannot be agreed upon, and if Subcontractor is so directed in writing by Contractor, Subcontractor will do the work (on the basis of its actual cost plus percentage fees for overhead and profit as set forth in Article 6(i)). Contractor shall not be liable for payment for any extra work performed by Subcontractor unless Contractor first expressly authorizes such work in writing.

## In the event that Subcontractor performs any such authorized extra work on an actual cost plus basis, it shall furnish each day to the representative of Contractor, duplicate payroll sheets, time sheets, material tickets, and statements or slips for all other charges, retaining a copy of each, and securing on each the signature of Contractor’s authorized representative (to acknowledge receipt only, not approval); such signed copies of payroll sheets, timesheets, material tickets, statements and slips shall accompany all bills and vouchers presented with application for payment.

## If Subcontractor believes that any order or direction by Contractor (or by Owner or Architect or Engineer) is a change to the contract affecting the cost or time of Subcontractor’s performance, Subcontractor shall immediately advise Contractor’s Superintendent (verbally and immediately) and shall also advise Contractor’s Project Manager (in writing within 72 hours). This notice shall include the date, time and place of the order or direction, and the name of the person who issued the notice. The notice shall also identify any writings which relate to the change and advise why Subcontractor contends this is a change. Subcontractor shall not perform any such order or directive until Contractor has had a chance to present Subcontractor’s claim of a change to Owner, or Contractor (in writing) directs Subcontractor to proceed. Any adjustment to the subcontract cost or time shall be made in accordance with the provisions of this Article and the rest of this Subcontract.

## Should Contractor, during the execution of this Subcontract, require Subcontractor to omit any work embraced within the terms of this Contract, said omission being for the account of Owner, Contractor, or any other subcontractor on the work, Subcontractor will omit such work, and Contractor will deduct from any monies due Subcontractor the actual amount agreed upon for said omitted work. In computing the amount of the credit for omitted work, the Subcontractor shall not be required to include credit for overhead and profit on the omitted work unless the Contract Documents require that Contractor would have to give up overhead and/or profit for omitted work. In such event credits for overhead and/or profit shall be governed by the method of calculating a credit for omitted work prescribed in the Contract Documents. If the parties cannot agree on a credit for omitted work, Contractor shall pass along whatever credit is allowed by Owner as an interim credit for that omitted work (for purposes of continuing to make progress payments on the adjusted scope of work) and the dispute shall be resolved in accordance with the provisions of Article 14.

## Subcontractor will make any request for additional compensation in writing to Contractor not later than seven (7) calendar days after the occurrence on which such request is based. (If the Contract Documents give Contractor seven (7) calendar days or less to make claims to Owner, Subcontractor’s time for making claims to Contractor will be 2 calendar days shorter than Contractor’s time in the Contract Documents.) Such request shall set forth in detail the circumstances on which it is based, including the reasons Subcontractor claims to be entitled to such additional compensation, the calculations of such compensation, daily payroll records and material tickets evidencing the amounts claimed and daily logs evidencing any delay, the circumstances causing such delay and the specific consequences to Subcontractor of such delay. No claim for extension of time or delay shall be valid unless made in accordance with this Article and Notice has been given in accordance with Article 4(c).

## If Subcontractor shall make any claim against Contractor for extra work or additional compensation, Contractor shall have the right to present any such claim or claims to Architect and/or Owner for determination and decision. In so doing, Contractor’s action shall not be construed as an acknowledgment of the validity thereof, nor a waiver of any right of Contractor, and such action shall be without prejudice to any and every one of Contractor’s rights. The decision of Architect and/or Owner regarding any claims shall be final and binding upon Subcontractor to the same extent and purpose that it is final and binding on Contractor.

## No additional cost or time will be allowed for difficulties or inconveniences arising from mud, dust, water, ice, snow, wind, heat or cold or similar natural or physical conditions, except to the extent that Contractor receives extra cost or time (attributable to Subcontractor) from Owner. Materials, tools, supplies, equipment, etc., belonging to or leased to Subcontractor are its responsibility and no claim for missing or stolen property will be allowed. Contractor shall not be required to provide hoisting facilities or temporary power, water or heat unless otherwise stated herein. Any material or equipment provided to Subcontractor at expense of the Contractor, that was not agreed upon in a prior, written agreement shall be backcharged to Subcontractor’s contract amount.

## In the event Contractor directs Subcontractor to work overtime or premium time for which Contractor is obligated hereunder to reimburse Subcontractor, Subcontractor will perform such work and shall be reimbursed only for the difference between regular time and overtime for direct payroll cost and the related payroll taxes, insurance, and benefits, and shall not be entitled to any additional compensation for overhead or profit or for inefficiencies or declines in productivity. Nothing herein shall be construed to obligate Contractor to pay for any overtime work not approved in writing, or for any overtime work caused by failure of Subcontractor to provide sufficient manpower or otherwise maintain the progress of Subcontractor’s work, or for any overtime work described in Article 4(d).

## If Subcontractor is entitled to payment for extra work, Subcontractor’s percentage fees (for overhead and profit combined) shall be: 10% for work performed by Subcontractor’s own forces and 5% for work performed by its sub-subcontractors and suppliers. Sub-subcontractors shall likewise be entitled to 10% for work performed by their own forces and 5% for work performed by their contractors and suppliers. No fee will be allowed on overtime premiums. Such percentages include all supervision above the foreman level, as well as all field, office, and other overhead. If the provisions of the Contract Documents limit overhead, profit, or other similar markups on Subcontractors’ extra work, or if the Contract Documents provide other percentage limitations, then such limitations shall apply and supersede the percentages identified above in this paragraph.

## In the event that Contractor performs any of Subcontractor’s work or pays for any of Subcontractor’s supplies or equipment or labor, Contractor shall be entitled to recover these costs from Subcontractor (whether by deduction from payments on this or any other contract with Contractor) or otherwise. In any such case, Contractor will be entitled to Contractor’s costs incurred plus a mark-up of 15% for Contractor’s administrative overhead. Nothing contained here shall limit Contractor’s entitlement to other damages (including delay damages) which Subcontractor’s action may have caused.

## Subcontractor acknowledges that Contractor’s field superintendents do not have the authority to authorize extra work or to relieve Subcontractor of the requirements of the Subcontract or the Contract Documents. Extra work, or claims invoiced as extra work, or claims which have not been issued as a written change order by Contractor: Maxx Builders and Deisgners, Inc., will not be authorized for payment nor shall become a part of the Subcontract. **DO NOT PERFORM ANY EXTRA WORK WITHOUT A PROPERLY EXECUTED CONSTRUCTIVE CHANGE DIRECTIVE AND/OR A CHANGE ORDER from CONTRACTOR: MAXX BUILDERS AND DEISGNERS, INC.**, signed by the Project Manager or Officer of Maxx Builders and Deisgners, Inc..

# TERMINATION FOR DEFAULT, TERMINATION FOR CONVENIENCE

## In the event Subcontractor shall in the judgment of Contractor, (i) fail to pay, when due, for materials, supplies, labor, or other items purchased or used in connection with the Scope of Work, (ii) fail to pursue the work in accordance with this Subcontract and the schedules established by Contractor, (and in accordance with Article 4) (iii) fail to supply a sufficiency of properly skilled supervisors, workmen, or of materials, tools, equipment, or supplies of the proper quality (including failure occasioned by a strike, picketing, boycott, or other cessation of work by Subcontractor’s employees or trades), (iv) interfere with or disrupt, or threaten to interfere with or disrupt the operations of Contractor, Owner, or any other laborer, materialmen, supplier, subcontractor, or other person working on the job, whether by reason of any labor dispute, picketing, boycotting, or by any other reason, (v) fail to perform the obligations described in Article 3 (a), (d), (e), (f), (g), (I), (n) (o) (q) or (u); or (vi) commit any breach of this Subcontract, then any such event shall immediately with no further action or notice required on the part of Contractor, constitute a default by Subcontractor under this Subcontract, and any such event shall be a breach of this Subcontract. Contractor may give Subcontractor written notice of default. Upon receipt of such notice, Subcontractor shall have two (2) calendar days in which to cure any such default. Provided, however, that if, in the reasonable judgment of Contractor, such default cannot be cured within a two (2) calendar day period after such notice, Contractor may notify Subcontractor of default but Subcontractor may not have any right to cure such default, in the discretion of Contractor.

## In the event of (i) a default for which there is no right to cure as provided hereinabove, or (ii) the expiration of the 2-day cure period set forth hereinabove without all such defaults having been fully cured, Contractor may terminate this Subcontract, take possession of all or any materials, supplies, equipment and tools pertaining to this job whether on the job site, in Subcontractor’s shop or in transit, and may make independent arrangements for completion of the job. The amount of completion cost, as well as any other costs, damages, or expenses, including Contractor’s legal fees and expense, incurred as a result of such default shall be charged (in the manner provided in Article 6(j)) against any unpaid balance due to Subcontractor under this Subcontract or under any other agreement between Contractor and Subcontractor; and, if said total costs, damages or expenses shall exceed the balance due, Subcontractor will pay the amount of said excess upon demand of Contractor. The materials, supplies, equipment and tools taken by Contractor may be used in completing the job and may be incorporated into the improvements being constructed. With respect to any of such items incorporated into the Project, or consumed in the job, the net reasonable value of the same as of the date of taking shall be taken into account in the calculation of the completion costs. With respect to any such items which are not so incorporated or consumed, or which have a salvage value, Contractor may, at its option (i) assume title to the same or any part of the same, as of the date of default and take into account the net reasonable value thereof as of the date of taking in the calculation of the total completion cost, damages, and expenses or (ii) return the same to Subcontractor and take into account the net reasonable value of the use thereof by Contractor in the calculation of the said total completion cost, damages, and expenses. As used in the preceding sentences, the phrase “net reasonable value” of any items shall mean the reasonable value after deducting all amounts which have been paid to Subcontractor on account thereof.

## In addition to the other remedies specified in this Subcontract, Contractor may immediately, in the event of default or failure of Subcontractor to perform its obligations, provide or arrange for the provision of such labor, equipment and/or materials necessary to continue and complete (any or all of) the work contracted for at Subcontractor’s cost and expense, and apply any and all funds due or to become due to Subcontractor thereto, all without terminating, rescinding or voiding this Subcontract or releasing Subcontractor from any liability hereunder or from any damages caused by Subcontractor’s failure to perform. Costs charged to Subcontractor under this paragraph shall be charged in the manner provided in Article 6(j).

## In the event of a default by Subcontractor under this Subcontract, all sums and obligations owing to Contractor by Subcontractor under any right or capacity, whether in this Subcontract or otherwise, shall immediately become due and payable to Contractor

## Contractor’s failure to declare a default or terminate this Subcontract in the event of Subcontractor’s delay shall not preclude Contractor from exercising the right of termination at a later time, and shall not be construed as a waiver of Subcontractor’s obligation to reimburse Contractor for any costs, damages, or expenses incurred as a result of such delay; and all such costs, damages, and expenses shall be paid or reimbursed to Contractor (in the manner provided in Article 6(j)) upon demand.

## In the event that Owner terminates the General Contract, Subcontractor shall immediately stop work. In such event, Contractor may terminate this Subcontract under Article 7(g) and Subcontractor will be entitled to compensation for its work performed up to the date of notice of termination, subject to Contractor’s offsets, under the terms of Article 7(h) plus such additional costs necessitated by the termination, together with a reasonable overhead and profit on such work, but only if (and when) Contractor is paid such funds by Owner. Payment of the funds described herein are expressly conditioned upon Owner’s payment of such sums to Contractor. Subcontractor will be bound by any and all provisions in the General Contract respecting assignment of the Subcontract, renegotiation as well as cancellation or termination.

## Contractor may terminate Subcontractor for Contractor’s convenience (and without the requirement to prove a default under this contract) in any event, including in the event that circumstances change such that it is in Contractor’s interest to terminate this Subcontract. Such changes in circumstance include, but are not limited to, termination of the General Contract for any reason, payment difficulties with Owner, difficulties in obtaining Subcontractor’s cooperation in the performance of any of Subcontractor’s obligations stated here, or any other circumstances which would justify Termination for Convenience under the Federal Acquisition Regulations of the United States Government. In the event of a Termination for Convenience, Subcontractor shall immediately stop work and shall be entitled to payment for all work performed under (and in accordance with) this Subcontract, together with any direct job-site costs related to the termination. In such an event, Contractor shall be entitled to take over any materials or supplies which Subcontractor has had delivered to the Project (or has contracted for) provided that Contractor shall pay Subcontractor the cost of such materials or supplies and a mark-up (to cover Subcontractor’s overhead) of 10%.

## In the event of termination under Article 7(f) or 7(g), Subcontractor shall have the right to payment only of costs incurred for work actually performed upon (and in accordance with) the Subcontract through the date of notice of termination (plus a reasonable mark-up not to exceed 10% for overhead and profit upon this work less (i) amounts paid to date, (ii) any costs of (or credited for) correction), and (iii) Contractor’s offsets. Such payment shall not exceed the amount earned to date on the Subcontract work less previous payments. For purposes of this Subcontract the term “costs” shall include only personnel and overhead based at the Project site.

## In the event that Contractor wrongfully exercised any of its rights under Article 7(a) - 7(g), or in the event that Contractor is found to have terminated this Contract wrongfully, then Subcontractor’s sole and exclusive remedy shall be compensation as described in Article 7(h). Subcontractor waives all other damages, actual or consequential.

## In addition to all of its other rights, Contractor may at any time request Subcontractor to provide adequate assurance of Subcontractor’s ability to complete the Project. Contractor may request assurance of Subcontractor’s financial capability, ability to secure appropriate labor, supplies, equipment or materials. Contractor may request this assurance be provided to it in any form reasonably deemed necessary by Contractor and Subcontractor’s failure to provide such assurance with a form in content satisfactory to Contractor shall constitute a material breach of this Subcontract and be independent cause for Contractor’s termination of this Contract, under Article 7(b) or supplementing Subcontractor’s forces under Article 7(c).

## If Contractor observes that Subcontractor’s work is jeopardizing the safety of project activities then Contractor may (at its option and in its sole discretion, and without prejudicing other remedies which are provided here) either (a) insist that Subcontractor immediately cease or cure the offending conditions, and/or (b) stop or cure the offending conditions itself at Subcontractor’s expense (as computed in the manner set forth in Article 6(j)).

# safety

## Subcontractor’s work will at all times comply with all laws, codes, ordinances, rules, regulations or any other requirements established by any governing bodies and in effect at the time any work is performed under or relating to this Subcontract. Subcontractor shall comply with all requirements of the Federal Occupational Safety and Health Act in its most recent edition and shall require, in writing, the same compliance by any Subcontractor and/or supplier employed by it (at any tier) to perform work under the Subcontract. Subcontractor will provide all documentation of hazardous material being used on the job site as required by governmental agencies including via the MSDS form. Any Subcontractor found to be in non-compliance of any laws, codes, ordinances, rules, regulations, OSHA regulations, or any other requirements established by any governing bodies, can and will be subject to a fine of $100 to be deducted from their total contract amount upon written notice provided by Field Operations or another representative on behalf of the Contractor.

## Subcontractor shall be solely responsible for the safety of Subcontractor’s employees and sub-subcontractor’s. Subcontractor shall take all reasonable safety precautions with respect to the Scope of Work and shall comply with all safety measures initiated by Contractor or Owner, including compliance with Contractor’s site-specific safety policies and requirements, Subcontractor will obey all applicable laws, rules, codes, ordinances, regulations, other requirements and orders of any public authority or Contractor for the safety of persons or property. Subcontractor shall report, immediately to Contractor, (i) any injury to any of Subcontractor’s employees on the site, and (ii) any other safety concerns which Subcontractor has. All notices or reports concerning safety should be made immediately to Contractor’s representatives, followed as soon as immediately practical by confirmation in writing.

# PROGRESS MEETINGS

Subcontractor’s attendance at weekly progress meetings is mandatory when Subcontractor is to be working on site in order to ensure proper coordination of Subcontractor’s work with other trades. Subcontractor will be required to begin attendance three weeks prior to the time it is required to begin performing work on the site, or such earlier or other time as Field Staff may direct. Contractor shall have the right to require a Subcontractor’s representative at any and all other meetings, whether called by Owner, Contractor, or others. Subcontractor’s representatives at each meeting will include at least one person who is authorized to act on behalf of Subcontractor in that meeting. Prior notice must be given if Subcontractor is unable to attend and a reschedule date shall be decided.

# WAIVER OF LIENS

## Subcontractor will execute such specific releases and/or waivers of liens and lien rights (and bond claim rights) as may be requested by Contractor. Subcontractor shall promptly apply all payments made hereunder to Subcontractor’s cost for labor and materials for the Project and shall further take any and all necessary actions to keep the Project free and clear of all claims for liens. In the event that any person furnishing labor or materials to Subcontractor files a lien claim (or a notice of intent to place a lien, or a claim on Contractor’s payment bond), Subcontractor shall promptly take all necessary steps to have such notice withdrawn. Such steps shall include, if requested by Contractor, the posting of a lien bond or other security satisfactory to Contractor. Contractor may also elect to pay claimant directly or to issue a joint check to Subcontractor and claimant.

## In the event that Subcontractor does not fulfill its obligations under this Article 10, Contractor may take all actions which it deems reasonable or necessary to protect the Project from liens or bond claims and the costs of any such actions (including attorneys fees), shall be computed in the manner described in Article 10(c) and paid by Subcontractor or deducted from amounts payable by Contractor to Subcontractor under this Subcontract or any other agreement or circumstance.

## Notwithstanding the other remedies which Contractor has under this Subcontract, Subcontractor will indemnify, defend, and hold Contractor harmless from any and all damages or claims arising out of or relating to Subcontractor’s payment (or nonpayment) to its subcontractors or suppliers at any tier, including but not limited to attorneys fees and the costs and expenses of litigation or arbitration.

# MISCELLANEOUS

## Subcontractor shall not sublet, assign, broker or transfer this Subcontract or any part thereof, or any interest therein, including the money due or to become due under it, without the written consent of Contractor; and any assignment or transfer without such consent shall be void and will be grounds for termination.

## Commencement of performance of any work described herein shall constitute Subcontractor’s agreement to each and every term hereof irrespective of whether this Subcontract is executed by Subcontractor.

## Subcontractor shall not cause any unnecessary hindrance or delay to Contractor or to other subcontractors on said Project and shall repair promptly and be responsible for all damage done to the work of Contractor or other subcontractors by Subcontractor, its agents, employees, subcontractors, or suppliers. Subcontractor shall be directly responsible to Contractor (or other subcontractors or suppliers) whose work is so damaged. Contractor shall be responsible to Subcontractor for physical damage to Subcontractor’s work only if such damage is directly and proximately caused by the sole negligence of Contractor.

## Subcontractor also will clean up and remove dirt, trash, waste materials, paint chips, packaging and other debris accumulated in connection with of the work by collecting and removing this from the Project and clear smudges, scratches and finger prints from paintwork, on a daily basis, or as directed by Contractor. Upon completion of the work in each area, Subcontractor shall sweep and otherwise make the area and immediate vicinity “broom clean.” Subcontractor shall also remove all of its tools, equipment, scaffolds, temporary structures and surplus materials as directed by Contractor. At Substantial Completion and Final Completion, Subcontractor shall clean and prepare the work for inspection and acceptance. Subcontractor shall also provide all cleaning required under the contract documents relating to Subcontractor’s work, even if those are in excess of those stated under this Subcontract. In the event Subcontractor fails to perform these obligations, Contractor may, at its discretion, perform this work or arrange for its performance at Subcontractors expense (to be computed in accordance with Article 6(j) of this Subcontract).

## Subcontractor shall enforce discipline and good order among Subcontractor’s employees, suppliers, and subcontractors engaged in the work. Contractor may require Subcontractor to remove from the Project any such employees, suppliers, subcontractors, supervisors or others employed on the work who Contractor may deem incompetent, improper, unsatisfactory or a hindrance to progress of any work on the Project, whereupon any such employee, supplier, or subcontractor shall be so removed and shall not again be employed on any part of the work without written consent of Contractor.

## Subcontractor will not engage in discriminatory employment practices in violation of any Federal, State, or local law including any order or regulation of any agency authorized to enforce any such law. To the extent applicable, Subcontractor will comply with Title VII of the Civil Rights Act of 1964, Executive Order 11246, and all additional orders, regulations, amendments, etc., pertaining thereto, including certification of nonsegregated facilities. Subcontractor will furnish such additional information, certifications, and policies as may be required by the Contract Documents, by Owner or applicable law.

## Subcontractor will comply with all applicable rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Assistance Act of 1974, and the Americans with Disabilities Act of 1990.

## Subcontractor represents that Subcontractor is aware of any prevailing wage requirements which may apply to the Project and that Subcontractor will comply with any such requirements (and will abide by the determination by Owner or other authority with respect to application and effect of such laws).

## In the event of variations, conflicts, ambiguities or inconsistencies between or among the terms, provisions or conditions of this Subcontract and the General Contract, the terms, provisions and conditions of the General Contract shall control. In the event of variations, conflicts, ambiguities or inconsistencies between or among the terms, provisions or conditions of this Subcontract and any other Contract Documents, the terms, provisions and conditions of this Subcontract shall control.

## Contractor has the right (at any time during the Project) to request that Subcontractor furnish a bond guaranteeing its performance of this Subcontract and/or payment of obligations to subcontractors and/or suppliers under this Subcontract. If Contractor requests such a performance and/or payment bond, Subcontractor will furnish the requested bond(s) in the amount and form and with such surety as is acceptable to Contractor. The cost of the bond shall be paid by Subcontractor and reimbursed by Contractor. Subcontractor’s failure to furnish a bond satisfactory to Contractor (if requested) shall be grounds for termination of this subcontract under Article 7 (b).

##  Subcontractor will not deal directly with representatives of Owner, Lender, or other party but shall handle all matters connected with this Contract, the work, or the furnishing of the materials or payment therefore, exclusively through Contractor, unless otherwise directed in writing by Contractor.

## This Subcontract shall be governed by the laws of the State of Texas, without regard to principles of conflict of laws. However, if a dispute arises involving the correlative rights and duties of Owner and the Contract Documents stipulate that the laws of another state govern, the Contract Documents will take precedence over this paragraph and this Subcontract shall be interpreted in accordance with the laws of the same state whose laws govern interpretation of the Contract Documents.

## Although drawn by Contractor, this Subcontract shall - in the event of any dispute over its meaning or application - be interpreted fairly and reasonably and neither more strongly for nor against either party.

## Delay, waiver, forbearance or failure by either party to exercise rights or remedies under this Subcontract or to insist on strict compliance of these Subcontract terms and conditions shall neither (a) relieve the other party of strict compliance with all term and conditions of this Subcontract nor (b) waive, restrict or adversely affect any rights or remedies as to any subsequent or continuing failure of either party to comply strictly with all terms and conditions of this Subcontract.

## The invalidity or unenforceability of any term or condition of this Subcontract shall not invalidate, render unenforceable, or adversely affect the remaining terms and conditions.

##  Subcontractor agrees to comply with all applicable safety laws and regulations and to ensure that all of Subcontractor's employees and others for whom Subcontractor is responsible will also comply. Contractor reserves the right, but not the obligation, to impose additional safety measures that Contractor or Owner deems reasonable. Subcontractor is an independent contractor and, as such, is solely responsible for the means and methods employed by Subcontractor to complete the work. Contractor's superintendent and other personnel are not responsible to Subcontractor for supervision or oversight of Subcontractor's forces or execution of the work, all of which are the responsibility of Subcontractor.

# INSURANCE AND INDEMNITY

## Before commencing any work under this Subcontract, and until completion and final acceptance thereof by Contractor and Owner, Subcontractor shall maintain at its expense such insurance as will protect Subcontractor, Contractor and Owner from claims set forth below which may arise out of, or result from, Subcontractor’s operations under the Contract, whether such operations be by Subcontractor, or by any sub-subcontractor, employed or contracted directly by them.

## Commercial General Liability (CGL) insurance shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and contractual liability.

## Insurance required by this Subcontract, shall be written for not less than any limits of liability indicated below; provided, however that Contractor shall have the right to impose alternative minimums:

|  |  |
| --- | --- |
| *(i) Worker’s Compensation -* | *At Statutory Minimums* |
| *(ii) Employer’s Liability* |  |
|  *Bodily injury by accident* | *$100,000 each accident* |
|  *Bodily injury by disease* | *$500,000 policy limit* |
|  *Bodily injury by disease* | *$100,000 each employee* |
| *(iii) Commercial general liability* | *$1,000,000 general aggregate**$1,000,000 products/completed operations aggregate**$1,000,000 personal and advertising injury liability* |
| *(iv) Combined bodily injury and property damage* | *$1,000,000 each occurrence**$50,000 fire damage**$5,000 medical expense* |
| *(v) Comprehensive Automobile-insurance (including hired & non-owned automobiles)* | *$1,000,000 combined single limit or**$500,000 bodily injury per person**$500,000 each occurrence**$250,000 property damage* |

## Subcontractor’s insurance policies shall each provide Waiver of Subrogation and Additional Insured coverage in favor of Contractor and Owner on ISO form CG 20 26 11 85.

## Subcontractor’s coverage will be considered primary with respect to any other insurance carried by Contractor. At Contractor’s option, Subcontractor will have its carrier(s) state that Subcontractor’s policies will be considered primary. All carriers shall be licensed in the state where the Project is located, with a Bests rating of A, unless otherwise agreed in writing by Contractor.

##  Subcontractor will provide and furnish, prior to commencing work, certificates in duplicate of insurance covering its work under this Contract. All policies of insurance shall be in “occurrence” form and with companies and in amounts acceptable to Contractor, and shall not be subject to modifications or cancellation during the terms of the work hereunder without thirty (30) days prior written notice to Contractor by certified or registered mail. Subcontractor will not change or terminate said policies without the written consent of Contractor. Subcontractor accepts exclusive liability for contribution tax or premiums for Unemployment Compensation, Social Security, Withholding Tax and Workmen’s Compensation. Subcontractor will require each of its subcontractors, suppliers or other persons with whom it contracts to comply with the provisions of this subparagraph (f) as well.

## By signing this Contract, Subcontractor represents to Contractor and to the respective governmental entity that all employees, subcontractors, suppliers and vendors of Subcontractor who will provide services on the Project will be covered by worker’s compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of self-insured, with the Insurance Commissioner’s Division of Self-Insurance Regulation (or other appropriate division). Subcontractor will require each of its subcontractors, suppliers or other persons with whom it contracts to provide Contractor a Certificate of Worker’s Compensation coverage prior to beginning their work on the Project, and shall also require those firms or individuals to provide, 30 days prior to the end of the coverage, (i) a new certificate showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the work on the Project, or (ii) a notice that coverage will expire in 30 days and has not been extended.

## **Subcontractor agrees to indemnify, defend and save harmless Contractor and Owner and all of Contractor's indemnities (and their officers, directors, shareholders, agents and employees) to the maximum extent permitted by law from and against all claims, demands, lawsuits, causes of action, damages, attorney's fees, costs, interest, judgments, liens, claims for lien and expenses of whatsoever kind or nature when the same, in whole or in part, result from, arise out of, relate to or concern (i) Subcontractor's performance (or lack thereof) of the Subcontract or the Subcontract Work or (ii) Subcontractor's failure (or that of its sub-subcontractors, suppliers, invitees or others acting in its behalf) to pay for all labor, materials, services, supplies and equipment for the nonpayment of which any lien, encumbrance, claim for lien, bond claim, demand or other claim or cause of action may be made or asserted against the Project, Subcontractor’s work, Contractor, Contractor's surety, if any, or Owner.**

## **If suit is filed by any person or entity against Contractor, Owner or any of Contractor's indemnities (and their officers, directors, shareholders, agents and employees) asserting any claim or lien for labor, services and materials used or purchased for use in the Subcontract Work, Subcontractor will at its own cost and expense, including counsel fees, defend such lawsuit on behalf of Contractor, Contractor's Surety, if any, and/or Owner and pay any judgment rendered in, or any settlement of such lawsuit. Subcontractor shall indemnify, defend and save harmless Contractor and Owner from all claims, encumbrances, liens, and judgments arising out of or related to the performance of Subcontractor’s work and all maintenance required under the Contract Documents.**

## **Subcontractor shall also, defend, indemnify and hold harmless Contractor, Owner, and Contractor's other indemnities (and their officers, directors, shareholders, agents and employees) (hereinafter collectively referred to as "indemnified parties") from and against any all claims, causes of action, lawsuits, judgments, and liability of every kind, including all expenses of litigation, court costs, and attorneys' fees, for injury to or death of any person (including without limitation, Subcontractor's employees), and for damages to any property, arising out of, relating to or in connection with the operations, performance, or acts or omissions of Subcontractor (including all employees, sub-subcontractors, suppliers and others for whom subcontractor is responsible), or the work performed or to be performed by Subcontractor. Subcontractor's above stated duty to indemnify extends to claims caused or alleged to be caused, in whole or in part, by the negligence of an indemnified party. Subcontractor waives and releases all damages for delay and consequential damages. Without relieving Subcontractor of its obligations hereunder, any of the indemnified parties, at their election, may defend or participate in the defense of any claim to which Subcontractor's duty to defend extends.**

## **Subcontractor shall also indemnify, defend and save Contractor and Owner harmless from any liability for all claims, demands, causes of action, losses, costs, expenses, damages, liabilities and judgments which Contractor and/or Owner may suffer or incur by reason of delay in performance, hindrance or interference attributable to or caused in whole or in part by the failure of Subcontractor (or those for whom Subcontractor is responsible) to pursue and complete Subcontractor’s work as and when directed by Contractor, or in accordance with the terms and conditions of this Subcontract.**

## **Subcontractor shall indemnify and hold harmless Contractor from any increased costs incurred by Contractor as a result of materials or equipment substitutions or price increases, regardless of whether Subcontractor has obtained approval thereof.**

## **Subcontractor shall defend all suits or claims for infringement of any patents of violation of patent rights and shall indemnify and save harmless Contractor and Owner from and against any claim, loss, expense, judgment or legal liability relating thereto.**

## **Subcontractor shall be responsible for and shall defend, indemnify and hold harmless Contractor from any fines or penalties levied or assessed as a result of Subcontractor's acts or omissions, including failure to abide with any federal, state, and/or local governing authority regulations relative to the performance of any work.**

## **Subcontractor shall defend, hold harmless and indemnify Contractor against any claim arising out of Subcontractor’s failure or alleged failure to comply with Contractor’s schedule, or ordinances, statutes or regulations.**

## **Note: These indemnification obligations include indemnifying the Indemnities for their own negligence, whether sole or concurrent.**

**(q) Further Assurances and Damages: Subcontractor shall perform, secure, or produce any and all documentation reasonably requested by Contractor to meet the requirements of any Agreement referenced herein. Moreover, in addition to all other remedies, whenever the Subcontractor fails to produce, or otherwise provide to Contractor, documentation required pursuant to Subcontract, including but not limited to insurance, then the Subcontractor shall pay in addition to any other damages (legal or equitable) to Contractor a general administrative expense equal to ten (10%) percent of this Subcontract.**

# SHOP DRAWINGS AND SUBMITTALS

## Subcontractor will provide all shop drawings and/or submittals which may be required, within thirty days of execution of the Subcontract Agreement (unless otherwise directed by Contractor), in accordance with the following terms and provisions.

## By submitting shop drawings to Contractor, Subcontractor represents that the work described therein meets the requirements of the Contract Documents in all respects, unless Subcontractor has specifically called out any deviations, potential deviations, or questions, both in the shop drawings themselves and in Subcontractor’s transmittal to Contractor.

## If Subcontractor identifies any deviations, potential deviations, or questions regarding contract compliance as described in Article 13(b) above, Contractor will attempt to obtain answers to those questions (or approval for any deviations) from Owner or Architect. However, Subcontractor is responsible for submitting shop drawings or any submittals in sufficient time to allow time for Owner (or Architect) to respond (and to allow any resubmittals and re-response necessary) without delaying the Project. In no circumstances will Subcontractor be granted additional time or relieved from delay damages because of the timing of Subcontractor’s provision of shop drawings or submittals.

## In the event that Owner approves a deviation from the Contract Documents, Subcontractor shall immediately process a Change Order to reflect this deviation. In the absence of a Change Order signed by Owner, or written direction from Owner, no approval of any shop drawings or submittals shall relieve Subcontractor of full compliance with all of the terms of Contract Documents, including the correction or replacement of any non-conforming work or materials.

##  Subcontractor will notify Contractor of any specific dimensions which are necessary for complete shop drawings. Contractor will either provide these dimensions to the Subcontractor within a reasonable time or will direct Subcontractor as to how these dimensions can be obtained. The Subcontractor is responsible for obtaining these dimensions if they are not provided by Contractor.

# DISPUTES

## In the event of a dispute between Subcontractor and Contractor relating to this Subcontract (or breach thereof) which involves corresponding rights or duties of Owner, then the dispute shall be decided in accordance with Contract Documents. In such case, Subcontractor and Subcontractor’s sureties (if any) shall be bound to Contractor to the same extent that Contractor is bound to Owner by the terms of the Contract Documents and by any decisions or determinations made there under; by an authorized person, board, court, or other tribunal. Contractor shall use their best efforts to afford Subcontractor a reasonable opportunity to provide information and testimony to the board, court, or tribunal. If the board, court, or tribunal will not allow Subcontractor to present evidence directly, then Subcontractor shall provide evidence to Contractor and Contractor shall present this information to the board, court, or tribunal on behalf of Subcontractor. In all respects, Subcontractor shall cooperate with Contractor in this regard. Subcontractor will exhaust all remedies available under the Contract Documents through Contractor and in accordance with this paragraph prior to commencing any litigation, arbitration, or any other action against Contractor.

## In the event any controversy or dispute arises between Subcontractor and Contractor relating to this Subcontract (or a breach thereof), which dispute or controversy does not involve the correlative rights and duties of Owner, either party may request mediation of the dispute. If either party invokes the mediation process, then the parties shall mediate the controversy or dispute pursuant to the procedures set forth in Article 14(c) and 14(d) below. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to this Subcontract. Mediation of the dispute shall be a condition precedent to any further rights that the Subcontractor has to the resolution of this dispute. Subcontractor acknowledges receipt thereof or the ability to procure on their own a copy of American Arbitration Association Rules relevant to any provision herein.

## Subcontractor and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

## If the controversy or dispute is not resolved by mediation, Subcontractor and Contractor shall as soon as practicable, subject to applicable statutes of limitation, submit any controversy or claim arising out of or relating to this Subcontract, or the breach thereof, to be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

## Parties to the arbitration shall include Contractor, Subcontractor, Subcontractor’s surety, and any other party which by other contract has become bound to arbitrate, and which are involved, directly or indirectly in the claim or controversy as a party seeking relief or a party against which relief is sought. However, a party may not be compelled to arbitrate if, in that party's reasonable discretion, another party necessary to the arbitration from that party's perspective cannot be joined in the arbitration, but all necessary parties could be joined in one court of competent jurisdiction. If any such necessary party is not joined in the arbitration, then all parties are excused from the arbitration, and the claim or controversy shall be heard in such court where all such parties may be joined.

## This agreement to arbitrate shall be enforceable under the Federal Arbitration Act or under the law of the jurisdiction where the Project is located, if and only if and to the extent that the Federal Arbitration Act is not applicable. In such event, the law of the jurisdiction where the Project is located shall then apply. Venue of any arbitration or litigation shall be in Harris County, Texas. Attorney’s fees, expert witness fees, arbitration fees, arbitrators' compensation and expenses, court costs and all other reasonable and necessary costs of any arbitration or suit shall be recovered by the prevail­ing party, in addition to other relief granted. Any arbitration award issued shall be final and binding, and enforceable in any court of competent jurisdiction.

## Subcontractor agrees that Subcontractor owes a duty to other subcontractors to perform Subcontractor’s work properly and that other subcontractors owe Subcontractor a duty to perform their work properly. Subcontractor and Contractor agree that neither will make a claim against the other arising out of the improper performance of work by other Subcontractors. Subcontractor agrees, if Subcontractor’s work is impacted or affected by the actions (or omissions) of the work of another subcontractor(s) or supplier(s), that Subcontractor’s sole remedy shall be directly through negotiation or, if necessary, through litigation or arbitration with such other subcontractor in accordance with the procedures described here. In such an event, Subcontractor shall consider this agreement to be an assignment by Contractor to Subcontractor of Contractor’s rights against the other subcontractors(s) or supplier(s) such that Subcontractor can proceed directly against the parties who have caused the harm alleged by Subcontractor, and Subcontractor accepts such assignment and agrees to accept and be bound by the result of such disputes proceedings and shall not seek any further damages against Contractor as a result.

## In the event of any dispute under this Subcontract (including the quality, scope, or amount of payment) for the work to be performed, Subcontractor shall nevertheless perform all work related to this Subcontract diligently and as directed by Contractor without interruption, deficiency or delay so as to expedite the completion of the Project in spite of any such disputes.

# HAZARDOUS MATERIALS

Subcontractor shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance, as defined in this Article, except in accordance with applicable Environmental Laws. Further, in performing the Subcontract Work, Subcontractor shall not cause any release of hazardous substance into, or contamination of, the environment, including the soil, the atmosphere, and any water course of ground water, except in accordance with applicable Environmental Laws. **In the event Subcontractor engages in any of the activities prohibited in this Article, to the fullest extent permitted by law,** **Subcontractor shall indemnify, defend and hold harmless Contractor, Owner and Architect, and all of their respective officers, agents and employees from and against any and all claims, damages, losses, causes of action, suits, and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys’ fees, arising out of, incidental to or resulting from the activities prohibited in this Article**.

## In the event Subcontractor encounters on this Project any Hazardous Substance, or what Subcontractor reasonably believes to be a Hazardous Substance, and which is being introduced to the work, or exists on the Project, in a manner violate of any applicable Environmental Laws, Subcontractor shall immediately stop work in the area affected and report the condition to Contractor in writing. The Subcontract Work in the affected area shall not thereafter be resumed except by written authorization of Contractor if in fact a Hazardous Substance has been encountered and has not been rendered harmless.

## **In the event Subcontractor fails to stop the Subcontract Work upon encountering a Hazardous Substance at the Project Site, to the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless Contractor, Owner and Architect, and all of their officers, agents and employees from and against all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, costs of court, punitive damages and attorneys’ fees, arising out of, incidental to, or resulting from Subcontractor’s failure to stop the Subcontract Work.**

## An extension of time shall be Subcontractor’s sole remedy for any delay arising out of the encountering and/or rendering harmless of any Hazardous Substance at the Project site. Contractor and Subcontractor may enter into an agreement for Subcontractor to remediate and/or render harmless the Hazardous Substance, but Subcontractor shall not be required to remediate and/or render harmless the Hazardous Substance absent such agreement. Subcontractor shall not be required to resume any work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated or rendered harmless.

## For purpose of this Subcontract, the term “Hazardous Substance” shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound, or mixture, which are defined in or included under or regulated by any local state or federal law, rule ordinance, by-law or regulation pertaining to environmental regulation, contamination, clean-up or disclosure.

# CLEAN UP

Subcontractor shall clean up and remove from the site as directed by Contractor all rubbish and debris resulting from Subcontractor’s work. Also Subcontractor shall clean up to the satisfaction of Owner, Architect and Contractor all dirt, grease, marks, etc., from walls, ceilings, floors, fixtures, etc., deposited or placed thereon as a result of the execution of this Subcontract. If Subcontractor refuses or fails to perform this cleaning as directed by Contractor, Contractor shall have the right and power to proceed with said cleaning, and Subcontractor will on demand repay Contractor the actual cost of said labor, plus a reasonable percentage of such costs to cover supervision, insurance, overhead, etc. If Subcontractor fails in its obligation to clean and remove all rubbish and debris as directed and required by the Contractor and/or schedule documents, Subcontractor shall incur the costs of any third-party cleaning crew acquired in order to keep the project on schedule. The Subcontractor shall have 48 hours upon receiving notice (via email, text, phone call, etc.), to begin clean up and execute it in a timely manner as directed by the Contractor.

# hOISTING

If Subcontractor makes use of Contractor’s hoisting facilities, Subcontractor shall pay for this service unless otherwise provided. Moreover, Subcontractor shall assume any and all liability which may result from any use of any equipment or other apparatus involved in hoisting anything belonging to the Subcontractor, including but not limited to materials, employees, sub-subcontractors or other person or property brought to the jobsite by Subcontractor.

# PATENT INDEMNIFICATION

**Subcontractor shall defend, indemnify and hold Contractor harmless from any liability including cost and expenses and reasonable attorney’s fees for or on account of any patented or unpatented invention, article or appliance manufactured or used in the performance of this Subcontract including their use by Owner.**

# NO OVERTIME

No overtime will be paid by Contractor to Subcontractor unless specifically agreed to in writing by Contractor in advance of incurring the overtime.

**THE PARTIES, BY THEIR SIGNATURES BELOW, ACKNOWLEDGE HAVING READ THIS CONTRACT AND THE PRIME CONTRACT DOCUMENTS INCORPORATED HEREIN, UNDERSTAND THEM, AND AGREE TO BE BOUND BY THEIR TERMS AND CONDITIONS.**

Subcontractor: **Subcontractor** Contractor: **Maxx Builders and Designers, Inc.**

Signature: Signature:

By: By:

Title: Title:

Date: Date: