



AGREEMENT

J J WHITE INCORPORATED®

5500 Bingham Street  
Philadelphia, PA 19120

CONTRACTOR

AND

SUBCONTRACTOR

PRINCIPAL CONTRACT NO.

**OCIP\***  
SUBCONTRACT NO.

NOTICE OF COMMENCEMENT NO. (if any):

BY THIS AGREEMENT made this      day of      A.D. 2018  
by and between J.J. WHITE INCORPORATED, of Philadelphia, Pennsylvania a Pennsylvania  
corporation hereinafter called "Contractor" and hereinafter called "Subcontractor,"

WITNESSETH

In consideration of the mutual promises herein made and intending to be legally bound hereby, the parties  
have agreed and do hereby agree as follows:

**ARTICLE I: The Work**

Subcontractor will provide such labor, material, equipment and services as may be necessary to  
furnish and install and complete the following:

**Subcontractor must include OCIP\* Credit Worksheet**

**\*OCIP is defined to mean an Owner Controlled Insurance Program.**

LUMP SUM PRICE ..... \$

The plans, specifications and drawings and Notice of Commencement (if any) above noted are incorporated in this Agreement as part hereof as fully as though same had been set forth in full. **Subcontractor acknowledges that it has received a copy of the plans, specifications and drawings and that it fully understands same with respect to the Work to be performed by Subcontractor hereunder (hereinafter 'the Subcontract Work'), Subcontractor assumes toward Contractor all of the duties and responsibilities which Contractor has assumed under the contract documents governing the performance of Contractor's work (hereinafter 'the Principal Contract') and agrees to be bound by all terms and conditions of the Principal Contract insofar as the same relate to the performance of the Subcontract Work. The Principal contract is available for review at the main office of Contractor. This provision does not limit Subcontractor's obligations to Contractor under the terms of this Agreement.**

When used in this contract, the word "Owner" shall mean the owner of the property on which the work is being done or the party for whom the work is being done. The word "Owner" can include Owner, General Contractor, Construction Manager, or any party with whom Contractor has contracted with in the Principal Contract.

**It is the intention of the parties to this contract that all the provisions of this Agreement apply from the commencement of any work by the Subcontractor regardless of the date of the execution of this Agreement.**

#### **ARTICLE II: Supervision**

Subcontractor shall at all times be personally represented by a competent person and/or superintendent on the job who shall be authorized to act for Subcontractor in all matters and for whose act or neglect Subcontractor shall be held liable. All notices or directions given by Contractor to Subcontractor's representative and superintendent shall be as binding on Subcontractor as if given directly to Subcontractor.

#### **ARTICLE III: Safety**

**ALL WORK IS TO BE DONE IN A SAFE MANNER IN FULL COMPLIANCE WITH THE LATEST OWNER AND J. J. WHITE, INC., PLANT, LOCAL AND FEDERAL LAWS AND REGULATIONS. IT IS ALSO THE SUBCONTRACTOR'S RESPONSIBILITY TO INSURE THAT HIS/HER EMPLOYEES KNOW AND FOLLOW THE J. J. WHITE, INC., PLANT, LOCAL, AND FEDERAL LAWS AND REGULATIONS. SUBCONTRACTOR SHALL ALSO REQUEST A COPY OF J. J. WHITE, INC.'S SAFETY PROGRAM FROM THE J. J. WHITE, INC.'S SUPERINTENDENT FOR PROVISION TO THE SUBCONTRACTOR'S SUPERINTENDENT. ANY SUBCONTRACTOR WITH AN ADVERSE HISTORY OF SAFETY VIOLATIONS OR OTHER ACTIVITIES THAT DO NOT COMPLY WITH THE J. J. WHITE, INC., PLANT, LOCAL AND FEDERAL LAWS AND REGULATIONS AS DETERMINED BY CONTRACTOR AND/OR OWNER CAN BE DEEMED TO BE IN MATERIAL BREACH OF THIS AGREEMENT AND CAN BE TERMINATED IMMEDIATELY FROM DOING BUSINESS WITH J. J. WHITE, INC. UNDER THIS AGREEMENT.**

**THE SUBCONTRACTOR SHALL FURNISH A SITE SPECIFIC HEALTH AND SAFETY PLAN TO CONTRACTOR AT SUBCONTRACTOR'S SOLE EXPENSE.**

#### **ARTICLE IV: Shop Drawings**

Where necessary for a proper understanding of the scope of work necessary to perform the work described in Article I above, the Contractor has the right to insist that the Subcontractor furnish shop drawings, including the right to insist that the drawings be approved by an architect and/or engineer before submission, to Contractor for Contractor's approval prior to the undertaking of any work under this Agreement. Shop drawings for work under this Agreement shall be furnished by Subcontractor to Contractor for Contractor's approval prior to the undertaking of any work under this Agreement. Failure to so submit shop drawings as provided hereunder shall be at Subcontractor's risk. Where shop drawings for work under this Agreement are required, such drawings and approvals if requested shall be furnished by Subcontractor to Contractor **at Subcontractor's expense** for Contractor's approval prior to the undertaking of any work under this Agreement. Regardless of the submission to and approval by Contractor of such shop drawings, it is the intention of this Subcontract Agreement that the work is to include everything, whether specified herein or not, necessary for the proper execution and completion of the work subject to the satisfaction of Contractor. Subcontractor shall do all necessary laying out and locating of any work involved in this Agreement.

#### **ARTICLE V: Time of Performance**

Time being of the essence hereunder, the Subcontractor shall begin, prosecute, and complete the Subcontract Work at the times required by the Contractor to enable the Contractor to begin, prosecute and complete in a timely manner its work under the Principal Contract.

If the Subcontractor shall be delayed in beginning, prosecuting or completing the Subcontract Work by the act, omission, neglect or default of the Contractor, the Architect, the Owner, or any supplier, contractor or subcontractor performing work on the Project, or by any damage caused by fire or other casualty for which the Subcontractor is not responsible, or by general strike or lockouts, then

the time for the completion of the Subcontract Work shall be extended for such period of time as the time lost by reason of any of the aforesaid causes. Such an extension shall be the Subcontractor's sole and exclusive remedy for such delay and the Contractor shall not be responsible for any increased costs, charges, expenses or damages of any kind resulting from such delay.

In the event of any failure of Subcontractor to complete its work within the required time, Subcontractor hereby agrees to reimburse the Contractor for any and all actual and/or liquidated damages that may be assessed against the Contractor by the Owner, which are directly or indirectly attributable to work caused by the Subcontractor's failure to comply fully with the foregoing provision.

No allowance of an extension of the time for performance of the Subcontract Work will be granted, unless a cause thereof is presented to the Contractor in writing and within forty-eight hours of the occurrence of the cause thereof.

The Subcontractor shall prepare and submit to the Contractor for approval, as and when required by the Contractor, a schedule showing the order in which the Subcontractor proposes to execute the Subcontract Work, and the respective dates on which the essential parts of the Subcontract Work will be begun and completed, within the time limits designated by the Contractor.

If the Subcontractor shall at any time be behind in the work herein contemplated, or if in the opinion of the Contractor, the Subcontractor is delaying the progress of the work necessary to complete the Project, then and in either such event if requested by the Contractor, the Subcontractor shall cause to be performed such overtime work as may be necessary to keep abreast with the general progress of the work at the Project, and in either such event the cost and expenses of such overtime shall be borne entirely by the Subcontractor.

Subcontractor also agrees to pay the Contractor such damages as the Contractor may sustain by reason of any delay, directly or indirectly, attributable to or caused by the Subcontractor, including, but not limited to, recovery of Contractor's overhead and expense related to the managing and supervising of the prime Contract work.

Subcontractor shall commence, prosecute and complete the work hereunder promptly and in accordance with such progress schedules as may be furnished by Contractor.

#### **ARTICLE VI: Indemnification, OCIP Program and Insurance**

Subcontractor agrees to indemnify, defend and hold harmless J. J. White, Inc. and Owner, their officers, agents, contractors, servants and employees from and against any and all liability for loss, damage or expense, including legal fees and costs for which J. J. White, Inc. or Owner may be held liable for reason of injury (including death) to any person or damage to any property arising out of or in any manner connected with the work to be performed for J. J. White, Inc. or Owner, whether or not due in whole or in part to any act, omission or negligence of J. J. White, Inc. or Owner, or any of their representatives, employees, subcontractors or third parties, whether known or unknown to J. J. White, Inc. or Subcontractor. It is expressly understood and agreed that the indemnity contained in this paragraph covers claims by or on behalf of Subcontractor's employees and shall survive termination or expiration of this Agreement. The indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or any Subcontractor under Workmen's Compensation Acts, Disability Benefits Acts or other benefit acts. Subcontractor acknowledges that Insurance is being provided for the Project pursuant to an Owner-Controlled Insurance Plan (OCIP), whereby Owner secures certain Insurance coverages for the benefit of Contractor and designated Subcontractors. Subcontractor has received a full description of the OCIP Program and agrees to provide and maintain in full force and effect, and secure from its Subcontractors, all insurance required under the OCIP Program. Before commencement of the work, Subcontractor will submit to Contractor, insurance certificates showing that the Subcontractor is covered by Workmen's Compensation insurance as required by law, and also public liability insurance for property damage, personal injury or death. Subcontractor will comply in all respects with the insurance requirements set forth under the Subcontractor's Insurance Requirements as outlined within this Article and/or as described in the Owner's OCIP Manual. Subcontractor is to name J. J. White, Inc., and others as required, as additional insured on all lines of coverage. The policies or coverage obtained by Subcontractor shall stipulate that such insurance is primary and any other insurance or self-insurance mandated by J. J. White, Inc., Owner or others as required, except for coverage being provided for the project pursuant to an OCIP, shall be excess only and shall not be called upon to contribute with such insurance. Subcontractor shall pay on account of its own employees such Social Security, old age benefits and Unemployment Compensation contributions as may be required. Compliance by the Subcontractor with the insurance requirements described in this Article and/or as described in the Owner's OCIP Manual as to the carrying of insurance, required coverages and furnishing of certificates of insurance shall not in any way relieve the Subcontractor from any liability or diminish its obligations under this paragraph or any other provision of this Agreement.

##### **SUBCONTRACTOR'S INSURANCE REQUIREMENTS**

The insurance required herein shall be obtained, endorsed, and maintained at the subcontractor's sole expense. Certificate(s) of Insurance along with copies of all endorsements required herein shall be delivered to Contractor prior to site mobilization or commencement of subcontractor's work. To the extent permitted by applicable law, subcontractor shall comply with the following:

#### **1. General Liability**

Subcontractor shall provide commercial general liability insurance on a policy form no less broad than **ISO CG 00 01**. Limits shall be **not less than**:

**\$1,000,000**  
**\$2,000,000**  
**\$2,000,000**

**each occurrence**  
**general aggregate**  
**products-completed operations aggregate**

- a. **General aggregate shall be project-specific.**
- b. Coverage shall apply on a **primary and non-contributory basis** for the Additional Insureds noted below and be affirmed on the policy by **ISO Endorsement CG 20 01**.
- c. **Waiver of Subrogation** shall be in favor of indemnitees and Additional Insureds noted below and shall be affirmed on the policy by **ISO Endorsement CG 24 04**.
- d. Completed operations coverage shall be maintained for the period of time the subcontractor may be held legally liable for its work.
- e. Claims-made general liability policies are not acceptable.
- f. There shall be no exclusion for residential or habitational construction.
- g. There shall be no EIFS exclusion, or exclusion applying to similar systems.
- h. There shall be no subsidence exclusion.
- i. There shall be no cross-liability exclusion, except for Named Insureds.
- j. There shall be no action-over or similar employee-injury exclusion.
- k. There shall be no exclusion for work from heights.
- l. There shall be an endorsement or other policy provision providing for a modified definition of occurrence establishing faulty workmanship as an occurrence with respect to the following states: Delaware, District of Columbia, Hawaii, Idaho, Kentucky, Oklahoma, Ohio, Pennsylvania, and Wyoming.
- m. **Additional Insureds** shall be as follows: **JJ White, Inc. its parent, subsidiary, and affiliated companies; Project Owner and indemnitees required to be indemnified in the Prime Contract; And each of their respective officers, agents, and employees;**
- i. Additional Insureds shall be added to the policy by way of **ISO Endorsement CG 20 10 11 85, or CG 20 10 10 01 plus CG 20 37 10 01, or their equivalent.**
  - ii. Additional Insured Endorsements shall accompany the Certificate of Insurance.
  - iii. Additional Insured status shall apply to both ongoing and completed operations.
  - iv. Additional Insured status shall not be limited to comparative negligence or vicarious liability of the Contractor.
  - v. Additional Insured status shall be maintained for the period of time subcontractor may be held legally liable for its work.
  - vi. Subcontractor must include these Additional Insured requirements (per Section 1.m above) in the contracts of its subcontractors and vendors.

2. **Workers' Compensation Insurance**

Shall be obtained in accordance with state statute.

- a. Other States coverage shall be included.
- b. Jones Act coverage shall be included, if applicable.
- c. USL&H coverage shall be included, if applicable.
- d. Policy shall contain a Maritime Coverage Endorsement, if applicable.
- e. Policy shall contain a Voluntary Compensation Endorsement (or equivalent) providing coverage for executive officers, partners, and sole proprietors if coverage is not otherwise scheduled on the workers' compensation policy.
- f. Policy shall include Waiver of Subrogation Endorsement in favor of indemnitees and Additional Insureds (listed in Section 1.m of this Attachment).
- g. If subcontractor is an employee leasing firm, utilizes an employee leasing firm, or will supply equipment with an operator, the workers' compensation coverage applying to that employee shall contain an Alternate Employers Endorsement on NCCI Form WC 00 03 01 A, naming "[MEMBER], its parent and affiliated companies".

3. **Employers Liability Insurance / Stop Gap Coverage (for monopolistic states)**

Limits shall be not less than:

\$ 1,000,000 each accident  
\$ 1,000,000 disease – each employee  
\$ 1,000,000 disease – policy limit

4. **Automobile Liability Insurance**

Limits shall be not less than:

\$1,000,000 Combined Single Limit

- a. Coverage shall apply to any auto, including all owned, hired, and non-owned vehicles used by the subcontractor, its employees, agents, subcontractors, or suppliers.

b. Waiver of Subrogation shall be in favor of indemnitees and Additional Insureds noted in Section 1.m of this Attachment and shall be affirmed on the policy by ISO Endorsement CA 04 44 03 10.

c. When applicable, policy shall include MCS-90 Endorsement in compliance with the Federal Motor Carrier Safety Administration (FMCSA).

5. **Excess/Umbrella Liability Insurance**

Subcontractor's limits shall be not less than:

\$ 5,000,000 each occurrence

\$ 5,000,000 aggregate

a. Coverage shall apply as excess to (including but not limited to) general liability, automobile liability, and employers liability.

b. Coverage shall be on a follow-form basis.

c. Coverage shall apply on a primary and non-contributory basis for the Additional Insureds noted in Section 1.m of this Attachment and be affirmed on the policy by way of endorsement, or shall otherwise follow the underlying ISO Endorsement CG 20 01.

d. Waiver of subrogation shall be in favor of indemnitees and Additional Insureds noted in Section 1.m of this Attachment below and shall be affirmed on the policy by way of endorsement, or shall otherwise follow the underlying ISO Endorsement CG 24 04.

e. Additional Insured requirement of Section 1.m of this Attachment shall also apply and shall be affirmed on the policy by way of endorsement, or shall otherwise follow the underlying ISO Endorsement CG 20 10 11 85, or CG 20 10 10 01 plus CG 20 37 10 01.

f. Subcontractor acknowledges that they are purchasing excess/umbrella insurance on behalf of the Contractor and that such coverage shall be subject to vertical exhaustion before any other primary, umbrella, excess, or any other insurance of the Contractor will be triggered.

g. There shall be no exclusion for work from heights.

6. **Pollution Liability Insurance** (required if work includes demolition, excavation, or if subcontractor is required to disturb, abate, transport, handle, or use in any manner hazardous materials, including without limitation, asbestos, lead, PCBs, or petroleum products)

Limits of liability shall be not less than:

\$3,000,000 each occurrence

a. Coverage shall apply to bodily injury or property damage arising from a pollution incident or event arising from the subcontractor's activities.

b. Coverage should be on an occurrence basis. If written on a claims-made basis, the retro date shall be on or before the date the subcontractor commenced the Work.

c. Policy shall contain an Additional Insured Endorsement adding the entities noted in Section 1.m of this Attachment as additional insureds.

d. Coverage shall be maintained, including additional insureds, for the period of time the subcontractor may be held legally liable for its work.

e. Waiver of subrogation shall be in favor of indemnitees and Additional Insureds noted in Section 1.m of this Attachment and shall be affirmed on the policy by way of endorsement.

7. **Pollution Liability Insurance** – including mold/fungi (required if work includes, or interfaces with, the building envelope)

Limits of liability shall be not less than:

\$3,000,000 each occurrence

a. Coverage shall apply to bodily injury or property damage arising from a pollution incident or event arising from the subcontractor's activities.

b. Policy shall contain coverage for perils of mold, fungi, or similar microbial matter.

c. Coverage should be on an occurrence basis. If written on a claims-made basis, the retro date shall be on or before the date the subcontractor commenced the Work.

d. Policy shall contain an Additional Insured Endorsement adding the entities noted in Section 1.m of this Attachment as additional insureds.

e. Coverage shall be maintained, including additional insureds, for the period of time the subcontractor may be held legally liable for its work.

f. Waiver of subrogation shall be in favor of indemnitees and Additional Insureds noted in Section 1.m of this Attachment and shall be affirmed on the policy by way of endorsement.

8. **Professional Liability Insurance** (required if work includes professional services, architectural service, design services, or engineering services, and the like, including that of its subcontractors, or including any design and install responsibilities)

Limits of liability shall be not less than:

\$5,000,000 each claim

- a. Coverage shall apply to any negligent acts, errors, or omissions arising from subcontractor's professional services.
- b. Coverage should be on an occurrence basis. If written on a claims-made basis, the retro date shall be on or before the date the subcontractor commenced the Work.
- c. Coverage shall be maintained for the period of time subcontractor may be held legally liable for its work.
- d. Subcontractor and its architects, engineers, design professionals, and subcontractors shall provide prompt notice to Contractor of any claim asserted, the entry of any settlement, or rendering of any judgment which may be covered by this policy and which exceeds twenty-five percent (25%) of available policy limits of the policy.
  - i. In the event of such claim asserted, entry of any settlement, or rendering of any judgment, Contractor may require subcontractor and its architects, engineers, design professionals, and subcontractors to obtain additional professional liability insurance coverage so that coverage available is not less than the amounts specified above.

9. **Electronic Data Liability Insurance** (required if work is in or adjacent to a server room or data center)

Limits of liability shall be not less than:

\$1,000,000 each claim

- a. Policy shall be written on ISO Policy Form CG 00 65 12 07.
- b. Coverage should be on an occurrence basis. If written on a claims-made basis, the retro date shall be on or before the date the subcontractor commenced the Work.
- c. Additional Insured requirement of Section 1.m of this Attachment shall also apply and shall be affirmed on the policy by way of endorsement.
- d. Alternatively, general liability policy may be endorsed with ISO Endorsement CG 04 37 04 13.

10. **Boiler and Machinery Insurance** (required if work involves installation, maintenance, or any work involving boilers, machinery, or refrigeration units, and the like)

Limits shall be not less than:

\$1,000,000 each occurrence

11. **Motor Truck Cargo and/or Warehouseman's Legal Liability** (required if work involves moving, transportation, and/or storage of Owner property)

Limits shall be not less than the replacement value of the Owner property, artifacts, equipment and/or material.

- a. While such Owner property is in the care, custody, and control of the Subcontractor coverage shall include loading, unloading, transportation, and return of said artifacts, equipment, and/or material up to the acceptance by the Owner.
- b. Coverage will contain no limiting endorsements or exclusions with regards to fine arts, historic documents, antiques, or breakage.

12. **Equipment Liability Insurance**

Limits shall be not less than the replacement value of subcontractor's owned, rented, leased, or borrowed equipment, except such items which are included in and remain part of the permanent construction.

- a. Waiver of subrogation shall be in favor of indemnitees and Additional Insureds noted in Section 1.c and 1.m above, and shall be affirmed on the policy by way of endorsement.

13. **Riggers Liability Insurance** (required if work involves rigging including, but not limited to, moving, erecting, storing, hoisting, or lowering)

Limits shall be not less than:

\$10,000,000 each occurrence

\$10,000,000 aggregate

14. **Railroad Protective Liability** (required if work is within 50 feet of a railroad, including without limitation WMATA, VRE, etc.)

Limits and terms of such coverage shall be not less than those set forth by the railway operator.

15. **Builders Risk Property Insurance**

- a. Subcontractor shall be liable for damage to its work until acceptance by the Owner.
- b. Subcontractor shall be responsible for its pro-rata share of any applicable deductible for builders risk claims.
- c. Subcontractor shall waive rights of subrogation with respect to any claims involving the builder's risk/property insurance maintained by the Owner, or JJ White, or

Subcontractor.

16. **Watercraft Protection and Indemnity Insurance** (required if subcontractor's work involves the use of watercraft not covered by general liability policy)  
Limits shall be not less than the greater of those set forth below or the value of the watercraft:  
\$5,000,000 each occurrence

a. Coverage shall apply to all the crew members as well as passengers.

17. **General Provisions**

a. Policy terms, limits and coverages provided by subcontractor shall equal or exceed any requirements specified in the Contract Documents or required by law, but in no event shall they be less than required herein.

b. Subcontractor shall provide evidence of compliance by way of ACORD 25 Insurance Certificate which transmittal shall include all policy endorsements required herein.

c. Certificate shall show all liability limits in US Dollars.

d. Subcontractor must provide no less than thirty (30) days written notice to Contractor prior to any cancellation, non-renewal of any insurance required herein, or any reduction in or impairment of insurance limits.

e. Waiver of subrogation in favor of indemnitees applies to any insurance required hereunder or otherwise maintained by the subcontractor.

f. Any self-insured retentions on any of the coverages required above must be clearly disclosed on the Certificate of Insurance and are subject to Contractor's approval.

g. Contractor maintains the right to require a proper form of collateral for any self-insured retention.

h. Subcontractor's insurance, whether or not specified or required herein, shall be primary to any insurance maintained by the indemnitees and the additional insureds as outlined in Section 1.m.

i. Subcontractor's insurance companies must have an A.M. Best Rating of not less than A-, VIII.

j. Contractor has the right to receive certified copies of any subcontractor insurance policies upon written request.

k. Acceptance of the subcontractor's insurance certificate will not relieve any of the subcontractor's responsibilities under the subcontract and shall not constitute a waiver of subcontractor's obligation to provide insurance in accordance with and as required by the subcontract agreement.

l. Contractor has the right to withhold payment to subcontractor until such time as subcontractor complies with the insurance requirements.

m. Failure to comply with the requirements of Article VI shall be deemed a material breach of the subcontractor's obligations under the subcontract agreement.

n. Subcontractor must include these requirements in the agreements of its lower-tier subcontractors, vendors, suppliers, and service providers.

o. Any type of insurance or any increase in limits of liability not described above which the Subcontractor requires for its own protection or on account of statute shall be its own responsibility and at its own expense.

p. In the event of a failure of Subcontractor to furnish and maintain said insurance and to furnish satisfactory evidence thereof, the Contractor shall have the right (but not the obligation) to take out and maintain the same for all parties on behalf of the Subcontractor who agrees to furnish all necessary information thereof and to pay the cost thereof to the Contractor immediately upon presentation of an Invoice.

q. In no event are you to begin work until this Certificate of Insurance showing coverage in the aforementioned amounts required for this job is received and approved by our office. Any work performed without having the Certificate of Insurance received and approved by J.J. White, Inc. is at Subcontractor's own risk. Most importantly, no invoices will be paid to Subcontractor until a J.J. White, Inc. approved Certificate is on file with J.J. White, Incorporated.

**ARTICLE VII: Guarantee of Work**

Subcontractor shall remedy any defects due to faulty workmanship or material, provided that written notice of such shall be delivered to Subcontractor within a period of one year after completion of the work. The rights provided in this paragraph are in addition to, and not in substitution for, all guarantees or warranties contained in the project specifications and shall not limit in any way Contractor's rights and remedies against Subcontractor at law or in equity or for such longer period as may be provided by in the Principal Contract.

#### **ARTICLE VIII: Changes in Work**

Subcontractor shall not proceed with any extra or additional work not required by this Agreement, except upon execution by Contractor of a written change order.

Contractor without invalidating this Agreement may order extra work or make changes by altering, adding to or deducting from the work, the contract payments being adjusted accordingly. All such work shall be executed under the conditions of the Agreement. No extra work or change shall be made unless in pursuance of a formal written work order stating specifically such changes. Any work done by Subcontractor without such work order shall be considered as having been performed as part of the original contract without charge to Contractor.

Said change order shall state the increased or decreased compensation due Subcontractor, which compensation shall be determined at the option of Contractor, in any change in one of the following ways and in accordance with the terms of the Principal Contract.

- (a) By estimate and acceptance in a lump sum;
- (b) By unit price named in the contract or subsequently agreed upon;
- (c) By cost plus as follows:

All charges for extra work will be based on percentages outlined in Attachment "A" incorporated herein by reference.

Extra work will not be approved for payment unless it is invoiced against a change order which authorized the work.

#### **ARTICLE IX: Risk of Loss**

Subcontractor shall have no claim against Contractor for loss or damage to its equipment or materials whether on the job site or installed in place, or in storage off-site for use or installation on or at the job site.

#### **ARTICLE X: Performance and Payment Bond**

If Subcontractor is required to furnish a performance and payment bond, Contractor will pay any and all premiums, at cost, due upon such bond unless the specifications provide that Subcontractor must furnish a performance and payment bond, in which event Subcontractor will pay any premiums due upon any bond so required. Proof of bond shall be provided from Surety or Sureties satisfactory to Contractor.

#### **ARTICLE XI: Mechanics' Liens and Claims—Waiver of Liens and Releases**

If Contractor posts a bond guaranteeing payment for goods, materials and equipment supplied, labor or services provided to the Project by Subcontractors, then Subcontractor agrees to waive its right to file a mechanics' lien and that no mechanics' liens, notices, or claims, or materialman's liens, notices or claims, or any other liens or claims of any kind whatsoever will be filed, enforced or maintained with respect to the goods, materials and equipment supplied, labor or services performed pursuant to this Subcontract against the Project for which they are supplied or performed, or against the owner, real property, building or other improvements of which the Project is a part, or any part or parts thereof or the appurtenances thereto by Subcontractor, its successors and assigns. If the bond posted by Contractor guarantees payment for goods, materials and equipment supplied, labor or services provided to the Project by sub-subcontractors, suppliers, materialman and other entities pursuant to a Contractor with Subcontractor, then Subcontractor shall obtain lien waivers from such sub-subcontractors, suppliers, materialman and any other similarly situated entities, stating that liens may not be filed on the Project and provide written notice of this lien waiver provision to its sub-subcontractors, suppliers, materialman, and all other persons or entities acting by, through or under it or them, prior to and before any labor or services are performed, or goods, materials or equipment are supplied to the Project pursuant to this Subcontract.

If Contractor posts a bond guaranteeing payment for goods, materials and equipment supplied, or labor or services performed by Subcontractor, then, in the event a mechanics' lien, notice or claim, or materialman's lien, notice or claim, or construction lien claim, or lien, or any other lien or claim of any kind whatsoever is filed, enforced or maintained by Subcontractor and/or any of Subcontractor's sub-subcontractors, suppliers, materialman and all other persons or entities acting by, through or under it or them, then Subcontractor shall defend, indemnify and hold Contractor harmless from such liens and/or claims, and shall also cause said mechanics' lien, notice or claim, or materialman's lien, notice, claim, construction lien claim, or other lien of any kind whatsoever, to be discharged in accordance with applicable law. Subcontractor also agrees to pay and reimburse Contractor for all costs, expenses and attorney's fees incurred by Contractor in defending, responding to and/or discharging liens or claims filed by Subcontractor and/or any of Subcontractor's sub-subcontractors, suppliers, materialman and all other persons or entities acting by, through or under it or them whenever a valid lien waiver is in place on a Project.

As a prerequisite to payment, Subcontractor agrees that it will execute, in a form satisfactory to owner, all documents required by Contractor that evidence, ensure and guarantee that the Subcontractor has made payment for all work performed in connection with this Subcontract, including, but not limited to, Releases and Partial Waiver of Liens, in consideration for each and every payment and up to the date covered by the payment, whether partial or final. Said Releases and Partial Waiver of Liens shall include, whenever so requested by Contractor, and in a form acceptable



to Contractor, Partial Waiver of Liens and Release of claims, costs, expenses, fees, charges, changes, change orders or change order requests that arise out of or relate to Subcontractor's work performed from all contractors, suppliers, persons and/or entities that have, or will, provide labor, materials, equipment, machinery, fixtures, services or labor under any agreement(s) with Subcontractor for the Subcontractor's work under this Subcontract.

The Subcontractor when required by the Contractor as a condition precedent to the making of final payment hereunder, shall furnish to the Contractor a full and complete release and discharge in a form satisfactory to the Contractor, of all liens, claims and demands arising out of or relating to the Subcontract work in any and all materials furnished, work done and equipment used in connection therewith. Furthermore, if, prior to final payment, the Owner or any party providing financing for the Project requests a release of liens from the Subcontractor, the Subcontractor shall execute and deliver such release of liens in a form satisfactory to the Owner or such other party.

If a Notice of Commencement has been filed with the Pennsylvania Department of General Services, Subcontractor acknowledges receipt of a copy of the Notice of Commencement. Subcontractor is advised that if the Owner has filed a Notice of Commencement, the Subcontractor must file a Notice of Furnishing to preserve its mechanics' liens rights. The Notice of Furnishing must be filed within forty-five (45) days after first performing work or services at the job site or first providing material to the job site. The following notice is provided in accordance with 49 P.S. § 1501.2:

A subcontractor that fails to file a Notice of Furnishing on the Department of General Services' publicly accessible Internet website as required by the act of August 24, 1963 (P. L. 1175, No. 497), known as the Mechanics' Lien Law of 1963, may forfeit the right to file a mechanics lien. It is unlawful for a searchable project owner, searchable project owner's agent, contractor or subcontractor to request, suggest, encourage or require that a subcontractor not file the required notice as required by the Mechanics' Lien Law of 1963.

#### **ARTICLE XII: Default**

Should the Subcontractor at any time refuse or neglect to supply sufficient skilled workmen and equipment or materials of the proper quality, as required by the Contractor, or fail to make prompt payment for materials, labor or equipment furnished and supplied in and about the performance of the Subcontract Work, or fail, when required, agreeably to the terms hereof, to submit to the Contractor satisfactory evidence of the payment by the Subcontractor of all indebtedness incurred for material, labor and equipment included in any previous monthly statement rendered in conformity with the stipulations hereof, or fail to proceed with the work as directed or otherwise fail in the performance of any of the agreement herein contained, or in the event the Subcontractor shall be adjudged a bankrupt, or make a general assignment for the benefit of creditors, or a Receiver be appointed on the account of the insolvency of the Subcontractor, the Contractor shall be at liberty, without prejudice to any right after, forty eight (48) hours written notice to the Subcontractor either to provide any such labor, materials or equipment and deduct the cost thereof from any payments then or thereafter due the Subcontractor, or to terminate the employment of the Subcontractor for the said Subcontract Work and to enter upon the premises and take possession, for the purpose of completing the Subcontract Work, of all materials, tools and appliances thereon and to employ any other person or persons to finish the Subcontract Work and to provide the materials therefore, and in case of such discontinuance of the employment of the Subcontractor, the Subcontractor shall not be entitled to receive any further payment under this Subcontract until the said work under the Principal Contract shall be wholly finished and accepted in accordance with the Principal Contract, at which time, if the unpaid balance of the amount to be paid under the Subcontract shall exceed the expense incurred by the Contractor in finishing the Subcontract Work, such excess shall be paid by the Contractor to the Subcontractor, but if such expense shall exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor. Once the Contractor has given the said forty-eight (48) hours notice, whether or not the Subcontractor corrects its failure or cures its default, it shall not be necessary for the Contractor to issue any subsequent written notices for the same or other failures or defaults in order to effectuate the Contractor's rights under this Article XII.

#### **ARTICLE XIII: Payment**

Subcontractor hereby acknowledges that the Contractor has made available to it the Principal Contract and Subcontractor hereby acknowledges that the Contractor has fully disclosed the Owner's manner of payment pursuant to the Contractor and Subcontractor Payment Act, 73 P.S. §501, et seq.

On Pennsylvania projects, in consideration for Contractor's agreement to enter into the Subcontract, Subcontractor hereby agrees to waive all rights to interest above the legal rate, penalties and/or attorney's fees provided by the Contractor and Subcontractor Payment Act, 73 P.S. §501, et seq.

On Pennsylvania projects, Subcontractor hereby agrees that if the Owner requires Contractor to waive any or all of its rights under the Contractor and Subcontractor Payment Act, 73 P.S. §501, et seq., Subcontractor hereby agrees to similarly waive its rights under the Act.

Before beginning the Subcontract Work, the Subcontractor shall prepare and submit to the Contractor for approval an itemized breakdown of the Subcontract Price, allocating amounts thereof to

the several items of work and material of the Subcontract Work conforming to the breakdown items designated by the Contractor, which itemized breakdown, upon approval by the Contractor, shall be used as the basis for all requisitions for payments submitted by the Subcontractor to the Contractor.

The Subcontractor, unless otherwise directed by the Contractor, shall submit to the Contractor at the end of each month a requisition containing an itemized estimate of the Subcontract Work done and materials furnished and incorporated into the Project which shall be in such form and be supported by such information, certificate and documents as the Contractor shall require. The amount to which the Subcontractor shall be entitled upon any such monthly estimate shall be the amount approved by the Architect/Engineer and/or Owner and Contractor provided that payment of the said amount has actually been received by Contractor, such receipt being a condition precedent to payment to the Subcontractor.

The Contractor shall pay to the Subcontractor, on or about the twenty-fifth day of the following month after receipt by Contractor of payment for such work, 90% of the amount approved by the Architect/Engineer and/or Owner and Contractor.

The balance due or final payment to the Subcontractor shall be paid, by the Contractor to the Subcontractor upon the expiration of thirty (30) days from the date of the completion of the Project, when accepted and certified by the Architect/Engineer and/or Owner and Contractor whichever the case may be provided that the said balance due or final payment has been actually received by the Contractor, such receipt being a condition precedent to payment by the Contractor to the Subcontractor.

Should it appear at any time that the Subcontractor, or anyone performing any part of the Subcontract Work, has not paid any amount due for labor, materials, equipment, or services supplied in connection with the performance of the Subcontract Work, or that there remain unsettled or anticipated claims relating to the Subcontract Work for which there is not in place sufficient insurance coverage, or confirmation that the Subcontractors existing insurance has not accepted or provided coverage of any loss in full, or for which their remain outstanding indemnifications obligations, the Contractor shall have the right, but not the obligation, to retain out of any payment then due or thereafter to become due to the Subcontractor, monies sufficient to pay such amount. If all payments due hereunder have been made to the Subcontractor, the Subcontractor shall refund such amount to the Contractor.

Payments made hereunder shall not be evidence of the performance of this Subcontract, either wholly or in part, and no payment shall be construed to be an acceptance of the Subcontract Work, or any part thereof. The acceptance by the Subcontractor of the final payment hereunder shall be deemed to be a complete and unconditional release of any and all existing or future claims or demands by the Subcontractor against the Contractor, known or unknown hereunder or in connection herewith, whatever they may be or howsoever they may arise, as well as for every act and neglect of the Contractor and any person or firm for whom the Contractor shall or may be deemed responsible.

The Subcontract Price includes all Federal, State, Municipal and Local Taxes including but not limited to Sales and/or Use Taxes applicable to the performance of the Subcontract Work set forth under Article I hereof.

Invoices for the work must be in our office by the 30th of each month, to be recognized for payment unless otherwise directed by Contractor.

The Subcontractor agrees that Contractor shall be under no obligation to pay the Subcontractor for any work done under this Agreement, until and unless Contractor has been paid therefore by the Owner. The time when payments shall be due the Subcontractor shall be postponed until Contractor has received same from the Owner and the Subcontractor hereby expressly accepts the risk that it will not be paid for the work performed by it in the event that Contractor, for what ever reason, is not paid by the Owner for such work. The Subcontractor further agrees and acknowledges that it relies primarily for payment for work performed on the credit and ability to pay of the Owner, and not of that of Contractor and that the payment by the Owner to Contractor for work performed by the Subcontractor shall be a condition precedent to any payment obligation of Contractor to the Subcontractor.

Subcontractor shall pay for all materials and supplies furnished and for all work, labor and services performed as required under this Subcontract, shall execute partial and final releases of liens upon demand by the Contractor, and shall indemnify Contractor and Owner against and save them in the premises harmless from any and all claims, demands, liens or suits, for all such material and supplies purchased and for all work, labor and services performed by others, including reimbursement of attorney's fees and any other costs of defense incurred.

The Subcontractor agrees and covenants that money received for the performance of this Subcontract shall be used solely for the benefit of persons and firms supplying labor, materials, supplies, tools, machines, equipment, plant or services exclusively for this Project in connection with this Subcontract; that money paid to the Subcontractor pursuant to this Subcontract shall immediately become and constitute a trust fund for the benefit of said persons and firms, and shall not in any instance be diverted by Subcontractor to any other purchase until all obligations and claims arising hereunder have been fully discharged.

#### **ARTICLE XIV: Miscellaneous Provisions**

- (a) Subcontractor shall furnish such labor as shall not cause any work stoppage.
- (b) Subcontractor warrants:
  - (1) That it has visited the job site and is familiar with the physical layout of same;

- (2) That it is familiar with the material, and equipment if any, which it is to provide hereunder and has included the cost of same in arriving at its contract price.
- (c) Subcontractor shall do all necessary laying out and locating of any work involved in this Agreement.
  - (d) The Subcontractor shall:  
Provide and supply, in the performance of the Subcontract Work a sufficiency of properly skilled and other workmen and equipment and an adequacy of materials of the proper quality as required by the Contractor.
  - (e) Abide by the safety rules and regulations established by the Owner and/or Contractor and/or promulgated by any Federal State, or Local Government body or agency with appropriate jurisdiction, including the Owner's safety rules and regulations. Subcontractor is to comply with Pennsylvania Law Number 1984-19 (Right to Know) and OSHA 29 CFR 1910-1200 (Federal OSHA Hazard Communication Standard) both of which subcontractor acknowledges that it understands and with which it will comply. Subcontractor shall supply to contractor copies of Material Safety Data Sheets for all hazardous substances to be used at the work place and make copies available to all interested parties on job upon request.
  - (f) Subcontractor shall enroll and participate in any online safety, quality or insurance services as may be required by Owner or JJ White at Subcontractor's sole expense.
  - (g) Provide sufficient, safe and proper facilities at all times for the inspection of the work by the Contractor, Owner and the Architect, or their authorized representatives.
  - (h) Within twenty-four hours after receiving written notice from the Contractor to that effect, proceed to remove from the Project site all materials condemned by the Contractor, whether worked or unworked, and to take down all portions of the Subcontract Work, which the Contractor shall by like written notice condemn as unsound, defective or improper, or as in any way failing to conform to the Drawings and Specifications. The Subcontractor shall make good all work damaged or destroyed thereby.
  - (i) In the event that the Contractor becomes involved in any administrative proceeding, litigation, arbitration, or any other proceeding for the resolution of a dispute with the Owner concerning or relating in whole or in part to the interpretation of the Principal Contract as it relates to the Subcontract Work or the Subcontractor's performance of the Subcontract Work, the Contractor shall, within (30) days of its receipt of notice of the said proceeding, give the Subcontractor written notice thereof. Thereupon, the Subcontractor shall have the opportunity to be represented by its own counsel at its expense in the said proceeding. Whether or not the Subcontractor supplies its own counsel, it shall be bound by the outcome of the said proceeding and any judgment, verdict, award, or decision shall be binding upon the Subcontractor.
  - (j) Disputes which may arise hereunder between the Contractor and the Subcontractor shall not interfere with the diligent performance by the Subcontractor of the Subcontract Work.
  - (k) This Subcontract is executed and delivered upon the condition precedent that the Subcontractor shall be approved by the person or persons required to do so by the Principal Contract and if either or any of them shall fail or refuse to approve the employment of the Subcontractor to do the Subcontract Work, then this Subcontract shall be null and void and of no force or effect and the Subcontractor shall not be deemed to have been damaged in any respect by reason of the failure on the part of any such persons to approve the Subcontractor for the Subcontract Work, or by the rescission or cancellation of this Subcontract by the Contractor.
  - (l) The Contractor and the Subcontractor, and their heirs, executors, administrators, successors, and assigns shall be bound by and severally fully perform the covenants herein contained.
  - (m) The Subcontractor shall not sell, let, assign or transfer this Subcontract, or any part of the Subcontract Work, or any balances or sums of money due or to become and payable hereunder, without the written consent of the Contractor first had and obtained.
  - (n) Subcontractor agrees and covenants that none of its employees who provide services pursuant to this subcontract are unauthorized aliens as defined in the Immigration Reform and Control Act of 1986.
  - (o) The Subcontractor shall require each Sub-Subcontractor, to the extent of the portion of the work to be performed by such Sub-Subcontractor, to be bound to the Contractor and Owner by the terms of the Contract documents, and to assume toward the Contractor and Owner all the obligations and responsibilities which the Subcontractor, by the Contract documents, assumes toward the Contractor and Owner, including, but not limited to the Indemnification and Insurance Obligations set forth in Article VI of this Agreement. The Subcontractor shall make available to each Sub-Subcontractor prior to execution of the applicable Sub-Subcontract Agreement, copies of the provisions of the Contract documents to which the Sub-Subcontractor will be bound.
  - (p) Whether or not any Sub-Subcontractor obtains or fails to obtain the required insurance coverages, shall not in any way relieve the Subcontractor from any liability or diminish its obligations under Article VI or any other provision of this Agreement.
  - (q) In the event that a claim is asserted against the Contractor which is covered by the Subcontractor's automobile liability, general liability, excess/umbrella insurance or any other insurance required under this Agreement, the insurance coverage under the Subcontractor's policies is primary and must be exhausted before the Contractor's insurance carriers will be required to bear any defense costs or the costs of a settlement, judgment, or award. Subcontractor shall be responsible for all deductibles or self insured retention limits, including expenses, as may apply to any insurance policies for which the Subcontractor is required to maintain under this Agreement, and Subcontractor certifies that none of the policies so

- maintained shall contain a deductible or self insured retention limit greater than \$10,000 per occurrence unless agreed to in writing by the Contractor.
- (r) Subcontractor shall not do anything to cause any of the insurance required to be provided to be invalidated in whole or in part. At the Contractor's request, from time to time or at any time, duplicate originals or copies of Subcontractor's or Sub-Subcontractor of any tier's policies, certified by the insurer, shall be delivered to Contractor within fourteen (14) days of request by Contractor. Any and all policies so requested shall be made available to the Contractor at the sole expense of the Subcontractor.
  - (s) The law of the Commonwealth of Pennsylvania shall be deemed applicable to this Agreement and shall be used to decide any dispute related to this Agreement.
  - (t) Subcontractor shall perform all labor required under this Agreement utilizing union personnel unless written authorization has been obtained from Contractor to perform any part of the work utilizing non-union personnel.
  - (u) If Subcontractor requests that any payment for services performed under this Agreement be issued to any person or entity other than the named Subcontractor, or issued jointly to the named Subcontractor and any other payee, such check shall be subject to a 1% administration fee per check based on the individual check's value, and subject to a one hundred dollar (\$100.00) minimum fee payable to JJ White, Incorporated in advance of any check issued to a payee other than Subcontractor or a joint check issued to Subcontractor and any other payee.
  - (v) If Subcontractor or its employees or Sub-Subcontractors employees is deemed responsible for a safety infraction for violation of the Owner's and/or Contractor's safety rules and/or regulations, the Subcontractor at the Contractor's sole discretion, in addition to any and all provisions of this Subcontract Agreement may be subject to a Five Hundred Dollar \$500 change order deduction against the value of this Agreement per infraction.
  - (w) If Subcontractor or its employees or Sub-Subcontractor or their employees of any tier intend on having a visitor on the Project site, then they shall first secure permission from the JJ White Superintendent, or designee thereof in advance of the contemplated visit. Additionally, any and all visitors must provide a copy of a valid form of photo ID, and purpose for their visit. Permission to access and/or visit the site shall be at the sole discretion of the JJ White Supervisor. Further, such visitor must comply with all site access requirement set forth by Owner.
  - (x) Subcontractor shall maintain and provide any and all reports pertaining to any accident, incident, loss or near miss good catch report, investigation materials and findings, and or witness statements to JJ White at its request.
  - (y) Subcontractor shall adhere to any Owner or Contractor required Drug and Alcohol and/or Controlled Substance policy at the Subcontractor's sole expense.
  - (z) Subcontractor or its employees or Sub-Subcontractor or their employees of any tier are expressly forbidden in utilizing any recording devices included but not limited to cameras, video and/or audio recorders, or any other electronic media device utilized or designed to capture images and/or audio of any kind on or in relation to the Project site without prior permission by the JJ White Site Superintendent or designee. Any permission so granted must be secured in advance of any recording and in writing. Copies of all recordings shall be provided to the authorizing JJ White Site Superintendent or designee immediately upon request.

#### **ARTICLE XV: Unloading**

Subcontractor shall unload all the material and equipment referred to in Article I of this Agreement as and when delivered to the job site. In the event Subcontractor fails to unload said material and equipment promptly upon delivery to the job site, Contractor may unload same, if in the sole discretion of Contractor, failure to so unload would impede the progress of the work and, in such event, Contractor shall charge back to Subcontractor the expense incurred in so unloading. In the event material and/or equipment is furnished by Owner it shall be the responsibility of Subcontractor to arrange for and make delivery of same to the job site.

#### **ARTICLE XVI: Clean Up**

The Subcontractor shall on a daily basis or less frequently, in the sole discretion of Contractor, and at the Subcontractor's own cost and expense, (1) keep the Premises upon which it is working free at all times from all waste materials, packing materials and other rubbish accumulated in connection with the execution of the Work by collecting and depositing daily said material and rubbish into dumpsters, (2) clean and remove from its own Work and from all contiguous work of others any soiling, staining, mortar, plaster, concrete or dirt caused by the execution of the Work and make good all defects resulting there from, (3) at the completion of its Work in each area, perform such cleaning as may be required to leave the area "broom clean" and (4) upon the completion of the Work, remove all of its tools, equipment, scaffolds, shanties, trailers and surplus materials. Should the Subcontractor fail to perform any of the forgoing to Contractor's satisfaction, Contractor shall have the right after notice (written or oral) to perform and complete such work itself or through others and deduct the cost thereof from the payments due the Subcontractor. Subcontractor shall at all times keep the premises upon which it is working free from accumulation of water, waste material or rubbish and upon completion

shall thoroughly clean the premises where it worked under this Agreement.

#### **ARTICLE XVII: Permits and Regulations**

Subcontractor shall procure at its own expense all necessary permits and licenses except those stated in the specifications to be obtained by the Owner. Subcontractor shall observe and abide by all applicable laws, Federal, State and any subdivision thereof, and by all rules and regulations of any other regulatory body in connection with any and all work to be performed hereunder. Upon completion, Subcontractor shall deliver to Contractor such permits, licenses, certificates and other authorization.

#### **ARTICLE XVIII: Materials**

Any material furnished by Subcontractor, unless otherwise specified, shall be new and of a grade and type called for in the specifications. No substitute of any materials shall be made without the written approval of Contractor's President or General Manager stating specifically the materials which may be substituted. Oral or written approval by any other individual will not be considered as authority for any substitution.

Any materials furnished by Subcontractor that do not conform to the specifications or materials substituted without the aforesaid written approval will be rejected whether installed or otherwise, and shall be removed immediately from the site and replaced with materials satisfactory to the Contractor at Subcontractor's own expense. Delay in completion of the work resulting from such replacement will be Subcontractor's responsibility.

In all cases where an article is mentioned in connection with the words "approved equal," Contractor shall be the sole judge as to whether the substitute submitted is the equal of the material specified and Contractor's decision shall be final. SUBCONTRACTOR MUST SUBMIT TO J.J. WHITE INCORPORATED ALL COPIES OF UNPRICED PURCHASE ORDERS PLACED WITH ITS SUPPLIERS AND VENDORS.

#### **ARTICLE XIX: Books and Records, including any records maintained in electronic format.**

Subcontractor shall maintain, in good and current order, and in accordance with generally accepted accounting principles, up-to-date, accurate and satisfactory books and records, including any records maintained in electronic format, of the costs and expenses incurred by Subcontractor with respect to of the Subcontract Work. Such books and records, including any records maintained in electronic format, shall include, without limitation, account statements, timecards, receipts, estimates, schedules, correspondence, and other documents which may have a possible bearing on the performance of the Subcontract Work, and shall reflect all costs and expenses of Subcontractor, either directly or indirectly, incurred under this Subcontract.

In connection with any Subcontract Work for which the Subcontract Sum is based on a time and material or cost-reimbursement basis, Contractor shall have the right, at reasonable times and places, to audit, inspect and copy Subcontractor's books and records, including any records maintained in electronic format. If, as a result of any such audit, it is determined that there has been an error or discrepancy resulting in an overpayment to Subcontractor, then Subcontractor shall promptly reimburse Contractor for the amount of such overpayment and shall reimburse Contractor for all costs of such audit, or alternatively, Contractor may deduct any such overpayment and auditing costs from any sums then owing to Subcontractor. Subcontractor shall keep all books and records, including any records maintained in electronic format, relating to the Project for three years following final completion of the Subcontract Work. Subcontractor shall include this right of Contractor to audit, copy and inspect all books and records in all of Subcontractor's lower tier contracts. Subcontractor shall maintain and provide to JJ White at its request, any and all Quality Control, Quality Assurance, or Quality Audit manuals, or any reports of findings at the sole expense of the Subcontractor.

#### **ARTICLE XX: Confidentiality**

Subcontractor and all Sub-Subcontractors recognize that the knowledge and information acquired by Subcontractor and /or Sub-Subcontractor concerning Contractor, Owner and the Project may include client lists, supplier and vendor lists, client contacts, client information, client data, project plans, products and services, proposals to customers and reports, plans, studies, price lists, financial statements, technologies, catalogs, software, formatting, programs, data processing systems and information, inventions, designs, know-how, and other trade secrets, private, confidential, or proprietary information of or about Contractor, the Project, and Owner (collectively, the "Confidential Information"). Subcontractor and all Sub-Subcontractors agree that they will not at any time (i) disclose, in whole or in part, any Confidential Information to any person, firm, corporation, association, or other entity for any reason or purposes whatsoever unless authorized in writing to do so by Contractor, or (ii) use any Confidential Information for their own purposes or for the benefit of any person, firm, corporation, association, or other entity other than Contractor, Owner or the Project, except in the proper performance of their services on behalf of Contractor, Owner or the Project. Subcontractor and all Sub-Subcontractors acknowledge that the Confidential Information is valuable,

special, and unique and recognizes that the Confidential Information would not be provided to them by Contractor in the absence of this agreement because of the risks that valuable Confidential Information might otherwise be divulged and thereby damage Contractor's competitive position in the marketplace and/or cause Contractor to be in breach of its contractual obligations to Owner. Furthermore Subcontractor and all Sub-Subcontractors shall undertake to protect such information from disclosure by its employees, agents, or subcontractors of any tier and shall hold Contractor and Owner harmless, without limitation, from any damage or loss suffered hereby including reasonable counsel fees and all related expenses.

**ARTICLE XXI: Compliance with Law**

In performing its obligations hereunder, Subcontractor of all tier shall comply fully with any and all Labor Law applicable to the Work in the United States. The provisions of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a) are incorporated herein by reference. **This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.** If requested by Contractor in order to comply with Law, Subcontractor will execute and deliver to Contractor certifications of its compliance with any Law applicable to it and/or its any of its subcontractors of any tier.

The provisions of 29 CFR Part 471, Appendix A to Subpart A (relating to the obligation to post a notice of employee rights under the National Labor Relations Act and to notify covered subcontractors of their obligation to do so) are incorporated by reference in this contract.

In performing its obligations, Subcontractors of all tier shall comply with any and all federal, state and municipal laws and ordinances and all rules and regulations thereunder, and all provisions required thereby to be included herein are hereby incorporated herein by reference. Subcontractor agrees to indemnify and hold Contractor harmless for all costs (including attorney's fees), liabilities and judgments caused by Subcontractor's, or any of its subcontractors of any tier, failure to comply with such laws, ordinances, rules or regulations. When demanded by the Contractor, Subcontractor will execute and deliver certifications of its, or any of its subcontractors of any tier, compliance with such laws, ordinances, rules or regulations.

**ARTICLE XXII: Entire Agreement**

This memorandum constitutes the entire agreement between the parties and supersedes all prior oral negotiations, correspondence and other documents and shall not be, in any respect, altered, amended or revoked except by a written memorandum signed on behalf of Contractor and Subcontractor, to the extent that the requirements of the Principal Contract are more stringent or impose a greater burden upon Contractor than corresponding provisions in this agreement impose upon Subcontractor, Subcontractor acknowledges and agrees that the more stringent or more burdensome provisions of the Principal Contract shall govern Subcontractor's performance hereunder.

IN WITNESS WHEREOF, Contractor and Subcontractor have executed this Agreement as of the day and year first above written.

_____ Subcontractor	J.J. WHITE INCORPORATED, Contractor
▶ By: _____ (Signature by an Officer of Company)	By: _____ James J. White, IV, President
▶ By: _____ (Print Name of Company Officer)	
▶ _____ (Signature of person Attesting Company Officer's signature)	_____ WITNESS
▶ _____ (Print Name of person attesting for Company Officer)	09941-A-OCIP Rev.02012018