



MCS
Tennis, Field Events, Berm
Bid Package No 4ESP
Mattawan, MI
AVB-26-515

AVB 00 0000

BIDDER INSTRUCTIONS AND REQUIREMENTS

Below is a list of the Sections that help comprise the AVB Construction Bidding and Contracting Requirements Article. Documents may be added or deleted as seen fit by AVB Construction with or without notice to the Bidders/Contractors. While this list is a general overview, it is not an all-inclusive list by any means. Other Bidding and Contractual documents such as drawings, specifications, reports, etc. are to be included as well.

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Within the following pages are the descriptions of each Section noted above as it pertains to MCS BP4 ESP Tennis, Field Events, Berm, also referred to herein as “The Project”. Each Bidder/Contractor/Sub-Contractor will be held responsible for reading and adhering to any and all data as found within the following pages. See also Article AVB 01 0000 Subcontractor General Requirements for additional regulations and responsibilities as well as any forms noted within the below notations beginning with “01”.

00 01 12 Project Summary - Invitation to Bid

AVB Construction, LLC is preparing to construct new Tennis facilities, field event equipment, and berm.

Bid Packages Already Awarded: None.

1.1. **Project Information:**

1. Project Location: Located within the campus of Mattawan Consolidated Schools. Southeast campus, directly south of ECEC.
2. Bid Information Contact: Amanda Lafler; (269) 816-4418; alafler@avbinc.com
AVB Construction, LLC
4200 West Centre Ave.
Portage, MI 49024

Proposals are due in person no later than 3:00 p.m. (EST) on Tuesday, June 30, 2026.



Submit the above pack in **clearly labeled** bid envelopes:

SEALED BID ENCLOSED FOR THE MATTAWAN CONSOLIDATED SCHOOLS PPROJECT

**To: Mattawan Consolidated Schools
56720 Murray St
Mattawan, MI 49071**

Attn: Central office- Pam Stermer

For The: Mattawan Consolidated Schools- Bid Package No.4ESP - Tennis, Field Events, Berm

Work Scope Bid:

3. All proposals submitted shall remain firm for 30 days after submittal.
4. The Bids will be publicly opened.
5. There will be no pre-bid meeting.
6. Plans are available electronically. All bidders who receive a bid invitation will receive project update notifications via email to the same email address throughout the bid process. Selecting that you DO NOT INTEND TO BID from the PROCORE generated bid invite will remove you from subsequent emails on this project. Forwarding your bid invite will allow others to download bidding information documents.
7. Bid documents will be available at Builders Exchange and Dodge Reports.

1.2. **Bid Requirements:**

1. Bidders who have not worked with AVB are asked to complete a pre-qualification form and submit with bid.
2. This project is prevailing wage.
3. Bids are to include Michigan Sales & Use Tax. Bidders are to include all other use taxes and other federal, state and local taxes, as may be applicable.
4. Bid Bonds are required. Bid Bonds are required in the amount of 5% of the submitted bid cost. A cashiers' check in the amount of 5% of the bid can be accepted in lieu of an agent bid bond.
5. The cost to add a Performance Labor and Material Bonds are a mandatory alternate
6. This project is not LEED.

7. Ichat Background Checks are a requirement for any who will be working on MCS Campus.
8. Local Participation is encouraged, but not a requirement for award.
9. Bid Proposal Forms are to be submitted for public opening per directions in bid packet.
10. Bidders are to provide a base bid per plans and specifications.
11. Potential Bidders are not permitted to contact the Owner's staff members regarding the bid process. Doing so will eliminate the potential bidder from consideration.
12. The bids will be publicly opened.
13. Note that a minimum 2-year warranty is required from the certificate of occupancy unless noted differently in the specifications.
14. Combined proposals will be considered for multiple work categories, however separate proposals are required for each work category. Combined work category proposals will be considered provided each work category is individually quoted.

End of Section 00 01 12 Project Summary – Invitation to Bid

00 21 13 Instructions to Bidders

- 1.1. Bid Requirements: Each bidder is to review the requirements of these bid documents thoroughly and in detail and to prepare a complete and thorough quotation that meets the full requirements of the bid documents and the intent of the work, delivering a complete “Turnkey” solution to the work/supply of the bid package. Bidders must physically visit and thoroughly inspect the site and/or the work to determine its existing condition and any additional scope of work items that may be necessary to accomplish the work in full. Bidder shall identify any such items and include them in the cost of the work of this item and they shall become a part of the noted scope of work.
 15. All items listed within the CM Work Scopes to be included in base bid proposal – see attached Scope of Work for each Work/Bid Category.
 16. Any and all required fees, permit costs, inspection costs, etcetera of authorities having jurisdiction are to be included in base bid amount.
 17. Storage costs including insurance of any materials purchased before schedule/site is ready to absorb said items.
 18. The bidder shall include in base bid cost to have full-time supervision on the jobsite at all times who is knowledgeable and competent in the detailed requirements of the work of this work category. This person shall not be removed from this project until the work is complete and shall not be removed or replaced without the approval of AVB Construction.
 19. Bidders are responsible for all document costs during Bidding **and** Construction Phases. AVB Construction will not be providing any paper copies.

1.2. Interpretation of the Bid Documents:

1. The Subcontractor is responsible for inspecting the site and for reading and being thoroughly familiar with the contract documents. The failure or omission of the Subcontractor to do any of the foregoing shall in no way relieve any Subcontractor from any obligation in respect to his proposal.
2. The Subcontractor must satisfy themselves of the accuracy of the work items in the contract documents by examination of the site and review of the plans and specifications including addenda. After proposals have been submitted, the Subcontractor shall not assert that there was a misunderstanding concerning the quantities of work, conditions, or nature of the work to be done.
3. It is the subcontractor’s responsibility to review ALL of the bid documents and drawings contained within this bid pack. NO additional monies will be added to the subcontractor’s contract for failure to review the COMPLETE and ENTIRE set of bid pack documents.
4. Should the Subcontractor find omissions or discrepancies in the contract documents, the Subcontractor should notify AVB Construction LLC at once via **email to the bid contact, including drawings and specifications references with questions** so that the Project Architect/Engineer may issue an addendum.

Email questions to: Amanda Lafler at AVB @ alafler@avbinc.com

5. Every request for information shall be made in writing via email to the bid contact. Unless modified or clarified by written notice or addenda, the contract documents remain in force.
6. No oral descriptions/ explanations/ interpretations shall be offered to the Subcontractor as to the meaning of any part of the contract documents.
7. All Subcontractors submitting proposals shall be responsible for providing all materials, equipment and labor necessary to maintain job progress to achieve specific dates of partial and substantial completion as noted in the project milestone schedule.
8. The contract documents contain the provisions required for the construction of the project. Information obtained from an officer, agent, or employee of the Owner or any other person shall not affect the risks or obligations assumed by the contractor or relieve him from fulfilling any of the conditions of the contract.
9. The contractor shall comply with all applicable laws, ordinances, and the rules and regulations of all governing authorities having jurisdiction over the construction of the project.
10. The contractor shall comply with any special safety provisions as required by AVB Construction LLC, Architect, and/or Owner. See AVB’s Health and Safety Manual.
11. Subcontractor to carry all costs of stored materials. In the event of a possible upcoming material shortage, bidder should note cost carried in bid for pre-ordering material to have on hand to complete project within schedule.

1.3. Substitutions Requests:

1. If a Substitution is to be requested/potentially utilized, a Pre-Bid Substitution Request must be submitted via email, with reasons for substitution and product equivalency data for review, submitted for approval and approved PRIOR to bid submission. No exceptions.

1.4. Bid Preparation and Inclusions:

1. Proposals shall be made on the proposal forms (see Section 00 41 00 Bid Form(s)).
2. Each proposal should clearly indicate the work category being submitted. Separate proposals are required for each work category. Combined proposals will be considered provided that each work category is individually quoted.
3. In the event of a discrepancy between the written prices quoted on the Proposal Form and those quoted in figures, the words shall control. The prices are to include the furnishing of all labor, materials, equipment, tools, management, supervision, insurance, taxes, and all other services necessary and proper for the completion of the work in accordance with all requirements of the contract documents.
4. Bid Proposals shall include any and all Addenda and PreBid RFIs issued during the bid phase. Noted Addenda included where applicable on the Bid Proposal Form.
5. Bids shall be signed with name and title typed below the signature. Where the Subcontractor is a corporation, proposals must be signed with the legal name of the corporation followed by the name of the state of incorporation, the legal signature of an officer authorized to bind the corporation to a contract, and sealed with their corporate seal.
6. Unit Prices:
 - a. Bidders must include all labor rates, unit cost items, proposal breakdowns, and all alternates as listed in the specifications, as shown on the drawings, as listed in the work category descriptions, or as listed on the Proposal Form.
 - b. Failure to comply with any requested information may be cause for rejection of bid.
7. Potential requirements to note while forming proposal:
 - a. Modification and Withdrawal of Proposal

Subcontractors may withdraw proposals at any time before opening but may not resubmit them. No proposals may be withdrawn or modified after the proposal opening. Proposals shall remain valid for 30 days after submittal.
 - b. Insurance:
 1. Subcontractors are responsible for the deductible to any claim by them against the Owner's Builder's Risk Policy.
 - c. Subcontractor Agreement
 1. The form of agreement shall be the AVB Construction, LLC Standard Subcontract Agreement, unless noted otherwise. See Section 00 51 00 for sample. The Subcontractor shall execute the agreement within seven (7) days following its receipt. The scope of each contract shall be defined by the various work category descriptions and Architectural drawings and specifications as published unless otherwise modified in the agreement. No other exclusions or prior modifications will be acknowledged whereby the agreement shall finalize and therefore supersedes all previous offers.
 - d. Bonds:
 1. Bid bonds are required for 5% of the proposed contract amount by all bidders. Where requested on the Proposal Form, bidders shall indicate the amount to be deducted from their total base bid, if performance and payment bonds are not required, and the name of their bonding company. Prior to determination of bonding and, therefore, award, the successful bidder shall be prepared to provide evidence of experience and financial stability as may be requested by the Owner or Construction Manager including audited financial statements. If the Owner or Construction Manager requires the successful bidder to provide a performance and payment bond, the successful bidders shall furnish separate performance and payment bonds, each with limits of 100% of the contract sum. Bonds shall be co-obligee bonds naming both the Owner and Construction Manager as principals. Bonds shall be secured from bond organizations licensed to underwrite within the State of Michigan, and both form and substance shall be subject to the review and approval of the Owner and Construction Manager.
 - e. Storage of Materials:
 1. Subcontractor to carry all costs of stored materials. See [Section 01 29 76 Payment Procedures](#) for additional information/requirements.

8. **Safety:** Provisions for safety to be included in base bid. AVB holds safety in the utmost regards. Please note AVB's Health and Safety Program will be in place on any and all jobs for which AVB Construction, LLC holds contract. A copy of this policy is provided with the bid documents.
 9. High-visibility t-shirts/vests, safety glasses and hard hats are expected to be supplied by the SubContractor and worn 100% of the time on site. No exceptions.
 10. Prevailing Wage and Fringe Benefits:
 - a. Each subcontractor shall abide by the Michigan Prevailing Wage Act, and all labor and employees on this project shall be paid current rates prevailing in Van Buren County.
- 1.5. Bid Execution/Submission:
1. A bid is invalid if it has not been deposited at the designated location prior to the time and date for Receipt of Bids indicated below or prior to any extension thereof issued by Addendum to the Bidders. Bids received after the time and date for Receipt of Bids will be unopened.
 2. Bids shall be prepared on unaltered Bid Forms (**FORM 00 41 00.1.1**) furnished in these documents. The Bidder shall make no additional stipulations on the Bid Form nor qualify the Bid in any other manner. Unauthorized conditions, limitations, or provisions attached to the Bid may be cause for rejection of the Bid.
 3. Clearly identify on the cover of the cover sheet/ email subject/ envelope cover with the following information:
 - a. Project name, bid package, and work category quoted
 - b. Name and address of Subcontractor
 4. All proposals submitted shall remain firm for 30 days days after submittal.
 5. All Bids shall be based on specified materials and equipment. However, bidders are encouraged to submit separate pricing for voluntary alternates for materials and or equipment that will result in higher quality or cost savings, or other benefits to the owner and/or project.
 6. Bidder inquiries shall be placed on a Request for Information Form (**FORM 00 43 00.1.4.2**) and submitted to the office of AVB Construction for review. See form for specific contact information.
- 1.6. Bid Opening:
1. Complete bid packages are to be placed in a clearly labeled envelope and delivered to Mattawan Consolidated Schools Central Office – Attn: Pam Stermer for public opening prior to bid due date and time. Sample label and bid packet checklist provided with form.
- 1.7. Post Bid:
1. Subcontractors may be required to attend a post-bid interview following the bid opening. Post Bid Interviews will be occurring during the week of 7/1/26 - 7/7/26.
 2. Each Subcontractor shall be prepared, if so requested by AVB Construction LLC or the Owner, to present evidence of his experience, qualifications, and financial ability to carry out the terms of the contract. See Section 00 45 00, **FORM 00 45 00.1.3.1**.
- 1.8. AVB Construction, LLC and the Owner reserve the right to reject any and all proposals, in whole or part, and to waive any informality in the bidding. Selection of successful bidders is not based solely on pricing.

End of Section 00 21 13 Instruction to Bidders

00 24 00 Scopes of Work

- 1.1. AVB is requesting proposals for the following Work Categories as described in the following pages. Each Work Category should be bid in whole; partial Work Categories will not be accepted. The following specification cross-reference is for information only.

26.100 Electrical
31.100 Sitework
32.120 Asphalt
32.130 Concrete
32.180 Sports Surfacing
32.185 Synthetic Turf
32.310 Fences & Gates

- 1.2. Each Work Category has Work Scope specific notations on the following pages. Note that the Work Scope specific notations are not meant to be an all-inclusive list of a particular Work Category's responsibility, rather, these notes are to highlight some, not all, of the critical aspects of this particular project only. See the following pages for Work Category specifics.

Scopes will be issued separately in bid package.

End of 00 24 00 Scopes of Work

**Geotechnical Report can be found in
Specification 003100 Available Project
Information**

End of Section 00 31 00 Available Project Information

00 31 13 Project Schedule

1.1. Preliminary Project Schedules/Phases:

1. Bid Schedules.
 - a. The preliminary construction schedule narrative included in the Contract Documents represents the general order and time frames for work to be followed by the Construction Manager in coordinating the project. The Subcontractors are to assume that their work will be coordinated in a manner consistent with industry practice, and the efficient coordination of all other trades.
 - b. Please note that although the schedule defines the planned order of construction, Bidders should not assume that any assurance is given or implied as to the calendar dates associated with completion of the work of a particular contract.
 - c. All Subcontractors recognize and shall accept modifications to the schedule which are reasonable, in the opinion of the Construction Manager, for the general interest of the project as a result of allowable time extensions (formally or informally approved) in any contract, and such modifications are inherent to the construction process and shall not qualify as a basis for extra compensation from the Construction Manager or Owner.
 - d. The Subcontractor, in submitting a proposal for the work of a particular work category, agrees to commit the necessary resources to complete the work activities of that work category, within a time span not greater than the planned duration. Work included within a work category, but not specifically defined by a particular work activity, is to be accomplished in a reasonable manner in conjunction with other work of the work category, and in such a way as to avoid complication of or to delay the work of other Subcontractors.
 - e. The Subcontractor shall allow for multiple mobilizations, at no additional cost, as required to maintain construction progress and as directed by AVB.
 - f. Several specific project dates are on the schedule below.

Schedule of Important Dates		
Event	Date	Time
Bid Release	Monday, June 8, 2026	-
RFI Due Date	Wednesday, June 17, 2026	5:00 p.m.
Addendum 1 Issue	Monday, June 22, 2026	-
Bid Due Date	Tuesday, June 30, 2026	3:00 p.m.
Public Bid Opening	Tuesday, June 30, 2026	3:01 p.m.
Post Bid Interviews:		
32.130 Concrete	Wednesday, July 1, 2026	2:00p - 3:00p
31.100 Sitework	Wednesday, July 1, 2026	3:00p - 4:00p
32.180 Sports Surfacing	Thursday, July 2, 2026	9:00a - 9:30a
26.100 Electrical	Thursday, July 2, 2026	9:30a - 10:30a
32.120 Asphalt	Thursday, July 2, 2026	10:30a - 11:30a
32.310 Fences & Gates	Tuesday, July 7, 2026	9:00a - 10:00a
Board of Education Approval	Monday, July 13, 2026	
Project Start	7/14/2026	
Project Completion	10/29/2026	

End of Section 00 31 13 Project Schedule

00 41 00 Bid Proposal Form(s)

- 1.1. See the following pages for the Bid Proposal Form(s) that are to be filled out and submitted for The Project. Reminder to infill and submit all pages as noted in **FORM 00 41 00.1.1.**

Bid Proposal Forms are to be filled out in and turned in to AVB Construction.

Reminder that Bids are due on:

Tuesday, June 30, 2026

at

3:00 p.m.

via

Physical Delivery: Mattawan Consolidated Schools, Central Office

Attn: Pam Stermer

Re: MCS BP4 ESP Tennis, Field Events, Berm, Bid Package No 4ESP

Bidder's Checklist

- Bid Form
- PreQualification Form – for those who have not worked with AVB in the past 3 calendar years
- Representations and Certifications (Affidavits, Public Open Instructions/Labeling) IF APPLICABLE
- If using an approved substitution, please note material bid as approved substitution



BUILD SOMETHING BETTER.

**MCS BP4 ESP Tennis, Field Events, Berm
Bid Package No 4ESP
Mattawan, MI
AVB-26-515**

FORM 00 41 00.1.1

**BID PROPOSAL FORM
MCS BP4 ESP Tennis, Field Events, Berm
Bid Package No 4ESP**

To: **MCS Central Office**
56720 Murray Street
Mattawan, MI 49071
Attn: Pam Stermer

BIDS DUE:
3:00 p.m. on Tuesday, June 30, 2026

EMAIL: alafler@avbinc.com

BASE BID INFORMATION:

_____, hereinafter called "Contractor",
(Bidder's Company Name)
does hereby agree to construct the following Work Category/Scope at the prices stated below.

WORK CATEGORY: _____
(List Work Category No. and Description)

ADDENDA: The contractor acknowledges receipt of the following addenda and has included those provisions in the fixed Base Bid price:

- Addendum # ____ dated _____
- Addendum # ____ dated _____
- Addendum # ____ dated _____
- Addendum # ____ dated _____

SAFETY: The contractor will comply with AVB Health and Safety Policy, OSHA and MIOSHA
EMR # _____ dated _____ EMR # _____ dated _____

- Will utilize standard AVB Subcontract
- Has included prevailing wage per bid documents.
- Will provide SOV, Work Plan and any Subcontract Review for Post Bid (has held post bid schedule time open).

TOTAL BASE BID: \$ _____,
(in figures)

Dollars
(written in words)

ALTERNATE AND CLARIFICATION INFORMATION:

⇒ **MANDATORY ALTERNATES:** Please list alternates as they appear in the specifications/write-up. Provide costs associated with the alternates as well as any concerns you may have in utilizing such alternate.

1. **Cost to ADD PLM Bond to Base Bid:** _____

Brief description with attached detail

ADD/DEDUCT _____ Dollars \$ _____

2. **Cost to ADD Per DWG ES 103, Keynote 3: Alternate #1: Provide light pole, light fixtures, lighting protection, control wiring, and all required equipment for a complete installation. Extend Base Bid 1" conduit to PA speaker at 10' 0" above grade.**

ADD/DEDUCT _____ Dollars \$ _____

⇒ **PROPOSAL CLARIFICATIONS (attach separate sheet(s) if necessary):**

CONTRACTOR UNIT RATES

- ⇒ The following rates/unit prices, once accepted by the owner will be applied to bulletins, directives, field orders and subsequent contract modifications.
- ⇒ This cost should not include overhead or profit
- ⇒ The unit rate (hourly, lump sum, lineal foot, square foot) should include all taxes, insurance and fringes.
- ⇒ Prices are effective as of the date of this bid submission and will be good thru substantial completion date of the project as well as the 2-year warranty work if required. If different pricing is to be utilized for subsequent years, please provide the revised rates with this bid form submission.

⇒ **UNIT PRICE INFORMATION AND WORK SCOPE REQUIRED ALLOWANCES AND ALTERNATES:**

Attach a page with items required per bid work scope.

⇒ **CHANGE ORDER WORK:** For revisions to the contract (exclusive of alternates & contract unit prices)
 bidder agrees to the following mark-ups for overhead and profit:

- | | |
|---------------------------|--|
| 1. Direct Labor | 10% maximum combined total overhead and profit |
| 2. Direct Material | 10%_maximum combined total overhead and profit |
| 3. Subcontractor Handling | 5%_maximum combined total overhead and profit |
| 4. Equipment | 10%_maximum combined total overhead and profit |

⇒ **LABOR RATES** (attach separate sheet(s) if necessary):

- | | |
|--------------------------------|----------------------------|
| 1. Trade Classification: _____ | Hourly Rate: \$ _____/hour |
| 2. Trade Classification: _____ | Hourly Rate: \$ _____/hour |
| 3. Trade Classification: _____ | Hourly Rate: \$ _____/hour |
| 4. Trade Classification: _____ | Hourly Rate: \$ _____/hour |

⇒ **PREMIUM TIME***

1. Provide information on your company's Policy on Premium Time as well as associated unit prices (i.e. OT/ Double Time, Holiday Pay, etc.). Attach the information to this Bid Proposal Form.
2. Please list those days that are considered "Holiday" as noted in your Employee Handbook:

_____.
3. If there are any working hour/day and/or shift stipulations or restrictions within your company, please list them herein (attach separate sheet(s) if necessary):

_____.

BID FORM VALIDATION:

⇒ **PROJECT SCHEDULE:** The contractor has reviewed the overall project schedule and the special coordination, sequencing, restrictions and scheduling of their individual work category and does hereby accept and will commit all resources necessary to meet these schedules.

Bidder has reviewed the issued project schedule/schedule notes and has material access and manpower to maintain the project schedule.

1. Man Hours/Crew Size to maintain project schedule: _____

2. Working Days to complete work scope: _____

Include any schedule work scope duration clarifications or material lead time issues (submittal, fabrication, site delivery, etc) that may pose an issue to the proposed schedule.

⇒ **RESPECTFULLY SUBMITTED BY:** _____
(Company's Legal name)

which is organized and exists under the laws of the State of Michigan as a/an:

Corporation, Partnership, Limited Liability Company, Individual

Building/Street Address: _____

City, State, Zip: _____

Phone Number: _____ FAX Number: _____

The undersigned hereby attests that this proposal is in compliance with all related bidding/contract documents.

Authorized Signature: _____ **Date:** _____

Show seal if contractor is a corporation:

Name: _____

Title: _____

⇒ **BID PROPOSAL FOLLOW-UP CONTACT INFORMATION:** Estimator/Follow-up Contact Name (if different from above) in the event bid proposal clarifications are required.

Name: _____

E-mail address: _____ Phone: _____

**CERTIFICATION OF COMPLIANCE – IRAN ECONOMIC SANCTIONS ACT
Michigan Public Act No. 517 of 2012**

The undersigned, the owner, or authorized officer of the below-named company (the "Company"), pursuant to the compliance certification requirement provided in the Mattawan Consolidated School's Request For Proposal (the "RFP"), hereby certifies, represents, and warrants that the Company (which includes its officers, directors and employees) is not an "Iran Linked Business" within the meaning of the Iran Economic Sanctions Act, Michigan Public Act No. 517 of 2012 (the "Act"), and that in the event the Company is awarded a contract by the Mattawan Consolidated School as a result of the aforementioned RFP, the Company is not and will not become an "Iran Linked Business" at any time during the course of performing any services under the contract.

The Company further acknowledges that any person who is found to have submitted a false certification is responsible for a civil penalty of not more than \$250,000.00 or two (2) times the amount of the contract or proposed contract for which the false certification was made, whichever is greater, the cost of the Mattawan Consolidated School's investigation, and reasonable attorney fees, in addition to the fine. Moreover, any person who submitted a false certification shall be ineligible to bid on a request for proposal for three (3) years from the date the it is determined that the person has submitted the false certification.

Name of Company

_____ Name and Title of
Authorized Representative

_____ Signature

_____ Date

STATEMENT REGARDING FAMILIAL RELATIONSHIP

AFFIDAVIT OF _____
(name of affiant)

STATE OF MICHIGAN

COUNTY OF _____

_____ makes this Affidavit under oath and states as follows:

1. I am a/the
- President
 - Vice-President
 - Chief Executive Officer
 - Member
 - Partner
 - Owner
 - Other (please specify) _____

Of _____, a bidder on a construction project for
(insert name of contractor)

_____ that involves, at least in part, construction
(insert name of school district)

of a new school building or an addition to or repair or renovation of an existing school building.

2. I have personal knowledge and/or I have personally verified that the following are all of the familial relationships existing between the owner(s) and employees(s) of the aforementioned contractor and the school district's superintendent and/or board members

3. I have authority to bind the aforementioned contractor with the representations contained herein, and I am fully aware that the school district will rely on my representations in evaluating bids for the construction project.

4. I declare the above information to be true to the best of my knowledge, information and belief. I could completely and accurately testify regarding the information contained in this affidavit if requested to do so.

(signature of affiant)

Dated _____

Subscribed and sworn before me in _____ County, Michigan, on

the _____ day of _____, 20____

(signature)

(printed) Notary public, State of

Michigan, County of _____

My commission expires on _____

Acting in the County of _____

Suspended or Debarred Vendor

The undersigned, the owner or authorized officer of (the "Bidder") hereby certifies and affirms that it and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.

Information regarding whether or not a business is suspended or debarred is available at the Federal System for Award Management website (www.sam.gov).

Bidder Name: _____

Bidder EIN #: _____

By: _____

Authorized Representative Name: _____

Its: _____

Date: _____

Subscribed and Sworn to Before Me:

State of _____

County of _____

This instrument was acknowledged before me on the _____ day of _____, 202_, by:

_____(Signature of Notary) My commission

expires: _____

End of Section 00 41 00 Bid Forms

1.2. Alternates: Alternates to The Project are as noted below.

1. Alternate No. 1: Cost to ADD PLM Bond to Base Bid:

2. Alternate No. 2: Cost to ADD Per DWG ES 103, Keynote 3:

(Alternate #1: Provide light pole, light fixtures, lighting protection, control wiring, and all required equipment for a complete installation.

Extend Base Bid 1" conduit to PA speaker at 10' 0" above grade.)

End of Section 00 43 00 Bid Supplement Forms

00 45 00 Qualifications, Representations & Certifications

1.1. Michigan Department of Civil Rights

1. All prospective Subcontractors, their Subcontractor and suppliers must be in compliance with the directives and guidelines of the Contract Compliance Division of the Michigan Department of Civil Rights.
2. All Subcontractors performing work for the Project shall be subject to review by the Contract Compliance Division of the Michigan Department of Civil Rights to determine his compliance and acceptability. The Subcontractor shall submit a "Certificate of Awardability" for the State of Michigan, Department of Civil Rights upon award of the contract.
3. The Subcontractor further agrees that every subcontract entered into for the performance of this Contract will contain a provision as herein specified, binding upon each Subcontractor. Breach of this covenant may be regarded as material breach of this Contract.

1.2. Michigan Right-To-Know Law

1. All Subcontractors must conform to the provisions of the Michigan Right-To-Know Law, 1986 PA 80, which requires employers to:
 - a. develop a communication program designed to safeguard the handling of hazardous chemicals through labeling of chemical containers and development and availability of Material Safety Data Sheets;
 - b. provide training for employees who work with these chemicals; and
 - c. develop a written hazard communications program.
3. The law also provides for specific employee rights. These include:
 - a. the right to be notified (by employer or Subcontractor posting) of the location of Material Safety Data Sheets (MSDS).
 - b. the right to be notified (by employer or Subcontractor posting) of new or revised MSDS no later than five (5) working days after receipt; and
 - c. the right to request copies of MSDS from their employers.

Provisions of Michigan's Right-To-Know Law may be found in those sections of the Michigan Occupational Safety and Health Act (MIOSHA) which contain Right-To-Know provisions and the Federal Hazard Community Standard which is part of the MIOSHA Right-To-Know Law through adoption.

1.3. Contractor Reference and Pre-Bid Evaluation Process: The following procedures may be utilized in part or in full to evaluate potential bidders prior to and during the bid process. This will enable the Recommendation Team (Owners representative, Architect, Construction Manager) time to conduct reviews of registered plan holders, obtain references, discuss past work experiences, and ultimately alert contractors of negative accounts associated with their past performance. This procedure will allow contractors the opportunity to resolve reference issues prior to entering the bid process.

1. Bidders Qualifications – Fill out Form 00 45 00.1.3.1 in its entirety and submit to AVB Construction, LLC, Attn: **Pam Stermer, Mattawan Consolidated Schools, Central Office Office** to be eligible for consideration as a qualified applicant. AVB Construction reserves the right to reject any form that the Owner/CM deems incomplete.
2. A recommendation team will review the pre-qualification forms and identify any applicants with unfavorable reference(s) or negative past work experience(s) as these may be stricken from consideration where applicable.
3. If the review team deems the applicant to be nonqualified, information regarding the ruling may or may not be submitted back to the applicant.
4. The recommendation team may or may not choose to meet with applicants who choose to appeal the decision.



BUILD SOMETHING BETTER.

**MCS BP4 ESP Tennis, Field Events, Berm
Bid Package No 4ESP
Mattawan, MI
AVB-26-515**

FORM 00 45 00.1.3.1

BIDDER QUALIFICATION FORM

Remit to:
AVB Construction, Attn: Pam Stermer
Mattawan Consolidated Schools, Central **Office**Office

GENERAL INFORMATION	
Full/Legal Company Name:	Date:
Entity Type: <input type="checkbox"/> Corporation <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Other:	
Federal Identification No.:	
Street/Physical Address:	
City:	State: Postal Code:
Phone:	Fax: Website:
Primary Contact:	Title:
Primary Contact Phone:	Primary Contact Email:
Years in business under the above noted name:	
Other Alias Names:	
Labor Affiliation: <input type="checkbox"/> Union <input type="checkbox"/> Non-Union <input type="checkbox"/> Merit	
Number of Office Employees:	Number of Field Employees:
Percent of work self-performed: %	
Describe tasks self-performed:	
Primary Trades/ Work Categories:	
CERTIFICATIONS	
Number of LEED Accredited Professionals:	
List last (3) LEED Projects performed:	
How many LEED projects have you worked on: <input type="checkbox"/> 0-3 <input type="checkbox"/> 4-6 <input type="checkbox"/> 8+	
EPA Certified Lead Renovation, Repair and Painting (Y/N):	
Check all that apply: <input type="checkbox"/> WBE <input type="checkbox"/> MBE <input type="checkbox"/> OTHER:	
FINANCIAL	
List volume of work (in dollars) for the past 3 years:	
20__ : \$ 20__ : \$ 20__ \$:	
Bank:	Address:
Contact:	Phone:
INSURANCE	
Insurance Agent:	Phone:
Bonding Agency:	Phone:

HISTORY
Has Owner/ Officer or Company ever failed to complete a contract (Y/N):
Has Owner/ Officer or Company even been involved in bankruptcy (Y/N)?

Has Owner/ Officer or Company ever had pending judgments, claims or suite against them (Y/N):			
PROJECT HISTORY			
List the last (2) <u>most recent</u> projects your firm has worked on, including contact information:			
Project Name:		Contact Name & Company:	
Contract Amount:		Phone:	
Architect:		Project Completion Date:	
Project Name:		Contact Name & Company:	
Contract Amount:		Phone:	
Architect:		Project Completion Date:	
List the last (2) projects your firm has worked on, including contact information, <u>that are similar in scope and size to this one</u> :			
Project Name:		Contact Name & Company:	
Contract Amount:		Phone:	
Architect:		Project Completion Date:	
Project Name:		Contact Name & Company:	
Contract Amount:		Phone:	
Architect:		Project Completion Date:	
SAFETY			
Does your company have a written Safety Program (Y/N)?			
Safety Contact:		Title:	Phone:
Does your company perform regular jobsite safety inspections (Y/N)?			
If yes, how often?		If yes, who conducts these inspections?	
How many MIOSHA and OSHA citations have your received over the last (3) years:			
Serious:	Willful:	Repeat:	Other:
Provide the following information for the past three complete years.			
	Year: 2025	Year: 2024	Year: 2023
Number of Work Days Lost			
Number of Restricted Work Days			
Number of Fatalities			
Total # of Employee Hours			
Total # of Illness/Injury Hours			
Experience Modification Rate (EMR)			

**END BID FORM 00 45 00.1.3.1
SUBMIT ALL (2) PAGES OF THIS PRE-QUALIFICATION FORM**

End of Section 00 45 00 Qualifications, Representations & Certifications

00 51 00 Agreement Form(s)

- 1.1. Below is/are the Agreement Form(s) that will make up a portion of the Contract Award Documentation.
2. AVB Construction, LLC Standard Subcontract Agreement

Job No. _____
Subcontract No. _____

AVB CONSTRUCTION, LLC
STANDARD SUBCONTRACT AGREEMENT

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SECTION 36 Acknowledgement of Review of Subcontract

ATTACHMENT I SUBCONTRACTOR'S SCOPE OF WORK

Job No. _____
Subcontract No. _____

SUBCONTRACT AGREEMENT

This Subcontract Agreement ("Subcontract") is made as of the Effective Date by and between AVB and Subcontractor.

WHEREAS, AVB and Subcontractor expressly desire to contract with respect to a specific portion of the work for the construction project hereinafter described.

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound, AVB and Subcontractor agree as follows:

**SECTION I
Definitions**

1.1 **Project:**

1.2 **The Owner:**

1.3 **The Designer:**

1.4 **AVB:**

AVB Construction, LLC
4200 West Centre
Portage, MI 49024
Telephone : (269)323-2022
Facsimile : (269)327-4293

1.5 **The Subcontractor:**

Facsimile:

1.6 **The Subcontract Price:**

(see ATTACHMENT III if applicable)

1.7 **The Effective Date:**

1.8 **The Completion Date:**

1.9 **Retainage:**

% of the dollar value of all Work completed, labor and/or materials provided by Subcontractor to the satisfaction of the Owner, AVB and the Designer.

1.10 **Bonding:**

1.11 **Description of Work:**

SECTION 2
Contract Documents

2.1 Enumeration of the Contract Documents: The plans, specifications, general conditions, special conditions and addenda prepared by the Owner and/or Designer for the Project and the general contract between the Owner and AVB (the "General Contract"), together with all Change Orders and modifications thereto through the date of this Subcontract, are available for examination by the Subcontractor at all reasonable times at AVB's office. All of the aforesaid documents (and any amendments thereto, including but not limited to those documents noted in Attachment I), together with Subcontractor's bid documents and bid proposal, if any, are hereinafter referred to collectively as the "Contract Documents."

2.2 Contract Documents to be Complementary: This Subcontract and the Contract Documents are intended to supplement and complement each other and shall, where possible, be so interpreted. However, if any provision of this Subcontract irreconcilably conflicts with a provision of the Contract Documents, the provision granting greater rights or remedies to AVB, or imposing the greater duty, standard, responsibility or obligation on the Subcontractor shall govern.

2.3 Documents Incorporated by Reference: Attachment I (Subcontractor's Scope of Work, Inclusions & Exclusions). Subcontractor is bound thereby as if the text of these documents were written verbatim into this Subcontract.

SECTION 3
The Work

3.1 Subcontractor's Work: Subcontractor, as an independent contractor, shall perform the Work specified in Attachment I in strict accordance with this Subcontract, the Contract Documents, the Project Schedule and all applicable laws (collectively, the "Subcontractor's Work" or the "Work").

3.2 Scope of Work: The scope of Subcontractor's Work includes, without limitation, all work, if any, noted in Attachment I as well as any materials, labor, supervision, services, inspection, testing, tools, equipment, supplies, fuel, transportation, installation, temporary facilities, clean up and all items or services of any kind whatsoever necessary to fully perform and complete Subcontractor's Work. Subcontractor shall pay for all costs of the performance of all its obligations under this Subcontract, even if those costs exceed the Subcontract Price. All materials shall be delivered to the Project Site in sealed containers with manufacturer's original labels and trademarks intact and attached. Installation shall be completed as per the manufacturer's printed instructions.

3.3 Performance Specifications: If the Contract Documents applicable to Subcontractor's Work contain Performance Specifications, then Subcontractor agrees and represents that:

- (a) The performance requirements are achievable by Subcontractor;
- (b) The Subcontract Price includes the cost of all design services related to or required for achievement of the Performance Specifications;
- (c) Unless AVB otherwise agrees, all design services shall be performed by qualified and licensed architects, engineers and other professionals ("Design Professional(s)") selected and paid by Subcontractor. Subcontractor shall:
 - (1) submit the names and qualifications of each proposed Design Professional;
 - (2) make no substitution of any Design Professional without the prior written consent of AVB; and
 - (3) in case of termination of any Design Professional, Subcontractor shall provide the services of another lawfully licensed Design Professional against whom AVB makes no reasonable objection.
- (d) Unless AVB otherwise agrees, Subcontractor's Design Professional(s) shall maintain Errors and Omissions or professional liability insurance in amounts and upon terms and conditions as set forth in Section 8 with respect to any design services provided by or through Subcontractor. Such insurance shall not limit or restrict Subcontractor's obligations to AVB under Section 33.

3.4 Effect of Contract Documents on Obligations, Liabilities and Claims: Subcontractor agrees that as to Subcontractor's Work:

- (a) Subcontractor owes to AVB the same obligations that AVB owes to the Owner or any third party under the Contract Documents;
- (b) Subcontractor shall be liable to AVB to the same extent that AVB is liable to the Owner or any third party under the Contract Documents;
- (c) Subcontractor's rights to make claims arising out of force majeure events or acts or omissions of the Owner and/or persons or entities for whom the Owner is responsible are limited to the same extent that AVB's rights to make such claims are limited by the Contract Documents;
- (d) Subcontractor's right to recover damages arising out of force majeure events or acts or omissions of the Owner and/or persons or entities for whom the Owner is responsible is limited to the same extent that AVB's right to recover such damages is limited by the Contract Documents; and
- (e) The terms and provisions of this Subcontract relating to Subcontractor's Work are in addition to and not in substitution of any of the terms and conditions of the Contract Documents.

3.5 Familiarity with Project Site Conditions: Subcontractor represents that it has:

- (a) carefully examined this Subcontract and the Contract Documents and understands their respective provisions;
- (b) visited the site of the Project (the "Project Site");
- (c) investigated and satisfied itself with respect to:
 - (1) the nature and locality where Subcontractor's Work is to be performed and the conditions and difficulties to be encountered, including access thereto;
 - (2) inspection of the area of work to insure that surfaces are ready for installation. Conflicts and surface conditions which are unacceptable for installation of materials within this trades scope shall be brought to the CM's attention immediately. Proceeding with the work constitutes acceptance of a surface as suitable for proper installation and full warrantee of the material being installed;
 - (3) the conformation and condition of the soil together with the character, quality and quantity of subsurface and surface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from this Subcontract, the Contract Documents, an inspection of the Project Site or the results of any exploratory work conducted by Owner or its representatives which are included in the Contract Documents;
 - (4) the availability of water, electricity or other utilities and access thereto;
 - (5) the type of equipment and facilities needed preliminary to and during performance of the Work;
 - (6) the type and content of purchase orders and arrangements for materials, supplies and equipment, if any, to be furnished by AVB for Subcontractor's use;
 - (7) the conditions affecting transportation, disposal, handling and storage of materials, supplies and equipment;
 - (8) the availability and adequacy of personnel and workers and the prevailing wage scales and, when required, union scales, benefits and working conditions, craft jurisdictions, craft area practices and existing collective bargaining agreements including any signed by or on behalf of AVB;
 - (9) prevailing weather and climatological conditions as well as uncertainties of weather, river stages, tides or similar physical conditions at the Project Site;
 - (10) all laws applicable to the Work or Subcontractor;
 - (11) any other factor(s) which may affect Subcontractor's Work under this Subcontract; and

(d) correlated its observations with the requirements of this Subcontract and the Contract Documents.

3.6 Reliance by Subcontractor on Own Investigation: Subcontractor has entered into this Subcontract on the basis of its own examination, investigation and evaluation of the matters set forth in Section 3.5, and is not relying upon any representations of AVB, the Owner, the Designer or any of their respective agents or employees except to the extent such representations are expressly stated in this Subcontract or the Contract Documents. Failure or refusal to properly consider and evaluate the factors set forth in Section 3.5 shall not relieve Subcontractor from its responsibility for properly estimating the difficulty, cost and expense of successfully performing its Work.

3.7 No Claims for Failure to Comply: Neither AVB nor the Owner shall be liable to Subcontractor for any claim for an adjustment to the Subcontract Price or an extension of time if such claim directly or indirectly arises from Subcontractor's failure or refusal to investigate or familiarize itself with the conditions under which this Subcontract is to be performed, including without limitation, all factors set forth in Section 3.5, or from any misunderstanding thereof by Subcontractor.

3.8 Design Deficiencies: Subcontractor shall give AVB prompt written notice of any condition or omission in the Contract Documents which Subcontractor believes is or may be a design error or deficiency.

3.9 Subcontractor's Representations as to Competency & Experience: Subcontractor hereby represents and warrants that Subcontractor (i) is experienced in performing the type, quality and quantity of work required for performance of this Subcontract; (ii) is financially solvent with sufficient capital and has sufficient management, supervision and labor capacity to properly perform this Subcontract; and (iii) is properly licensed and adequately insured to properly perform this Subcontract.

3.10 Subcontractor's Representations as to Materials: Subcontractor hereby represents and warrants that all materials used by Subcontractor in the performance of this Subcontract are new and of good quality, unless otherwise approved in writing by AVB or required by this Subcontract or the Contract Documents.

SECTION 4 Subcontract Price

4.1 Subcontract Price: The sum to be paid by AVB out of funds received from the Owner to the Subcontractor for the satisfactory performance and completion of the Work, and of all the duties, obligations and responsibilities of the Subcontractor under this Subcontract, and the other Contract Documents (the "Subcontract Price") shall be subject to additions and deductions as herein provided. The Subcontract Price is set forth in Section 1.6.

4.2 Risk of Non-Payment by Owner: Receipt of payment by AVB from the Owner is a condition precedent:

(a) to the right of Subcontractor to receive payment from AVB, unless the failure to have received payment from the Owner shall have been caused solely by the fault of AVB; and

(b) to the Subcontractor's right to make any claim against AVB's payment bond, if a payment bond is posted for the Project.

4.3 Taxes Included in Subcontract Price: The Subcontract Price includes all Federal, State, County, Municipal, Local and other taxes imposed by law and based upon labor, services, materials, equipment or other items acquired, performed, furnished or used for, or in connection with the Work, including, but not limited to, sales, use and personal property taxes payable by, or levied or assessed against the Owner, AVB or the Subcontractor. Where the law requires any such taxes to be stated and charged separately, the total price of all items included in the Work plus the amount of such taxes shall not exceed the Subcontract Price.

4.4 Subcontract Price as Full Payment: Subcontractor accepts the Subcontract Price as full and complete payment for Subcontractor's Work. The Subcontract Price includes Subcontractor's profit, overhead and all of Subcontractor's cost of performing Subcontractor's Work.

4.5 Subcontract Price Not Based on "Or Equal" Materials: Subcontractor represents that it has based the Subcontract Price on the exact materials specified in the Contract Documents. The Subcontract Price is not contingent upon approval by AVB, the Owner or the Designer of any submission by Subcontractor of substitute "or equal" materials. Any proposed change of materials after execution of this Subcontract will be governed by any applicable provisions of the Contract

Documents. All materials shall be delivered to the Project Site in sealed containers with manufacturer's original labels and trademarks intact and attached. Installation shall be completed as per the manufacturer's printed instructions.

SECTION 5

Payment

5.1 Schedule of Values: Within fourteen (14) days after a request by AVB or the execution of this Subcontract, whichever comes first, Subcontractor shall submit to AVB in writing, a complete and accurate proposed schedule of values for all of Subcontractor's Work (the "Schedule of Values"). The proposed Schedule of Values shall:

- (a) subdivide the Work into its component parts in such detail and with such supporting evidence as AVB may direct; and
- (b) include all quantities, prices and unit prices for each of the component parts comprising the Subcontract Price and any other information or documents AVB reasonably may require.

Unless otherwise directed by AVB, each allocation to a component part of the Work shall include the proportionate share of Subcontractor's overhead and profit. The total of the Schedule of Values must equal the Subcontract Price. The proposed Schedule of Values must be acceptable to AVB as to form and substance. In applying for payment, Subcontractor shall submit all of its Progress Payment Applications based upon the approved Schedule of Values unless it is found to be in error or in conflict with the procedures or determinations of AVB, the Owner or the Designer regarding payments. If, at any time during the performance of the Work, the Schedule of Values is found to be in error, or otherwise unsatisfactory to AVB, the Owner or the Designer, Subcontractor shall immediately revise and resubmit to AVB a revised Schedule of Values, correcting all errors or conflicts. No progress payment will be made to Subcontractor until the Subcontractor's Schedule of Values is approved by AVB, the Owner and the Designer and Subcontractor has delivered to AVB: (i) all contract deliverables as required by Section 6.1, (ii) any bonds required by Section 7, (iii) the Certificates of Insurance required by Section 8 and (iv) the information relating to Project Schedule and the reports and other information required by Section 9.

5.2 Progress Payment Applications: As directed by AVB, Subcontractor shall submit to AVB itemized progress payment applications on forms approved by AVB (the "Progress Payment Applications") to AVB's Commercial Accounting Department at 4200 W. Centre Ave., Portage, Michigan, 49024, no later than the 25th day of the month or as directed by project specific requirements. Subcontractor understands that its Progress Payment Applications will be used in AVB's Applications for Payment to the Owner. Each Progress Payment Application shall show the estimated value of work completed for each component part of Subcontractor's approved Schedule of Values including executed Change Orders, the amount of all previous payments and the amount of current Retainage.

(a) Progress Payment Applications shall have attached:

- (1) AIA G702 and G703 payment request signed by authorized signatory;
- (2) sworn statements and lien waivers from Subcontractor to a specified date, conforming to the requirements of AVB, the Owner, the Designer, and any construction lender or title insurance company, and valid under the Mechanics Lien laws of the State of Michigan, including, but not limited to, the Construction Lien Act, being Michigan Public Act 497 of 1980, as amended, or if the Project is located in a state other than Michigan, the Mechanics Lien laws of the state where the Project is located;
- (3) from lower-tier sub-subcontractors and material suppliers, such invoices, supporting data, sworn statements and waivers of lien as AVB, the Owner, the Designer and any construction lender or title insurance company may require confirming that:
 - (i) all monies due such persons are known and paid;
 - (ii) any liens or claims for its work to date are waived and released; and
 - (iii) as to Subcontractor's Work, the Project is lien-free;

(4) from suppliers of fixtures and equipment, disclaimers of any purchase money security interest and evidence that all fixtures and equipment are and will remain free of security interests of any kind;

(5) supplementary statements advising AVB of any change in information previously furnished by Subcontractor, and, if requested, a sworn statement that no changes have occurred since the last statement furnished;

(6) a fully-executed, current Monthly Statement of Subcontractor to AVB and a fully-executed Affidavit and Partial Waiver of Claims and Liens and Release of Rights, on forms acceptable to AVB, reflecting all previous progress payments;

(7) a description of the itemized component part(s) of Subcontractor's approved Schedule of Values including approved and executed Change Orders for which progress payment is requested, the item number(s), the six-digit cost code(s), the item description(s), the scheduled value(s), the Project name and address, the application number; the work period, the Project number, the Subcontract number, and the Subcontractor's name, address, and telephone number;

(8) such other documents as may from time to time be required by AVB, the Owner, the Designer, Surety and/or any construction lender or title company.

(b) The application for Final Payment shall have attached:

(1) a fully-executed, current Monthly Statement of Subcontractor to AVB, a fully executed previous progress payment Affidavit and Final Waiver of Claims and Liens and Release of Rights, each on forms acceptable to AVB;

(2) if required by AVB, similar statements, affidavits and waivers for all subcontractors and material suppliers on forms furnished by AVB; and

(3) such other documents as may be required by AVB, the Owner, the Designer and any construction lender or title company.

5.3 Evidence of Lien, Claim or Damage:

(a) If there is evidence of any lien or claim arising from Subcontractor's Work for which AVB or Owner might become liable; or, if Subcontractor causes damage to the work of others, AVB may retain out of any payment then due or to become due Subcontractor, an amount sufficient to indemnify AVB and the Owner for any loss or damage either may sustain in discharging such liens, claims or damage, including reasonable attorneys' fees and disbursements.

(b) If such liens, claims or damage arise after Final Payment, or if the amount due Subcontractor is insufficient to indemnify and hold harmless AVB and the Owner, then Subcontractor, within ten (10) days of written demand by AVB, shall reimburse AVB for all costs that AVB and/or the Owner have incurred or paid in discharging such lien or claim, including reasonable attorneys' fees and disbursements.

5.4 Disbursement of Subcontract Price:

(a) Disbursement of the Subcontract Price shall be limited to an amount calculated by either of the following methods:

(1) The Percentage of Completion Method, calculated as follows:

(i) Determine the percentage of completion attained for each component part of Subcontractor's Schedule of Values.

(ii) Multiply the percentage of completion for each component part of the Schedule of Values by the sum allocated to that component part.

- (iii) Add together the computed amounts for all component parts on the Schedule of Values as determined in Subsection 5.4(a)(1)(ii).

(2) The Cost to Complete Method, calculated as follows:

- (i) Determine the cost to provide all uncompleted Work for each component part of Subcontractor's Schedule of Values.
- (ii) From the scheduled amount for each component part of Subcontractor's Schedule of Values, subtract the cost to provide all uncompleted Work for that component part. The amount remaining for each component part of Subcontractor's Schedule of Values is the computed amount for that component part.
- (iii) Add together the computed amounts for all component parts of the Schedule of Values. After applying the above methods, subtract the amounts already paid and Retainage. In no event will disbursements to Subcontractor exceed the Subcontract Price.

(b) For each payment application, AVB, at its sole option, shall select the formula for disbursement. AVB will review Subcontractor's determination of the percentage of completion attained and/or cost to provide all uncompleted work on each payment application. AVB shall have the right to disapprove the percentage of completion attained and cost to provide all uncompleted work for each component part of the Subcontractor's Work listed on each payment application. AVB's forwarding of Subcontractor's payment application to the Owner or Designer for payment shall not constitute final or conclusive approval of the percentage of completion attained and/or cost to provide all uncompleted work set forth in the application.

(c) "Percentage of Completion," as used herein, if permitted by the Contract Documents and at AVB's sole option, may include materials stored off-site intended to be incorporated into Subcontractor's Work. If AVB allows payment for materials stored off-site, AVB may require from Subcontractor additional documentation, additional insurance, additional retainage or additional security. Subcontractor shall bear all costs and all risk of loss with respect to materials stored off-site, including any loss arising from delivery or transport.

(d) Before the first disbursement of the Subcontract Price, and from time to time thereafter, AVB may require all of Subcontractor's sub-subcontractors and material suppliers to provide signed verifications confirming the accuracy of the amount of their respective contracts, the amounts paid to date and any amounts owed. In the event of any material discrepancy, AVB shall require the discrepancy be resolved prior to payment.

(e) AVB, the Owner or the Designer may, at their option, employ a consultant to assist in determining whether Subcontractor's assessment of the percentage of completion attained for each component part of Subcontractor's Schedule of Values or cost to provide all uncompleted work for each component part of Subcontractor's Schedule of Values is accurate. Subcontractor shall cooperate with any such consultant.

5.5 Payment: Subject to the provisions of this Subcontract, and any other right of AVB to withhold payment, AVB shall pay to Subcontractor, after receipt from the Owner, any amount received from Owner allocable to the Subcontract Price.

5.6 Backcharges: AVB may deduct from any payment due Subcontractor, any costs incurred by AVB which are chargeable to Subcontractor.

5.7 Retainage: The Retainage defined and provided in Section 1.9 shall be withheld from each progress payment. Should the Contract Documents provide for a reduction of Retainage, the reduction will be made only if: (i) backcharges between AVB and Subcontractor have been resolved; (ii) Subcontractor's Work is on schedule and in conformance with this Subcontract, the Contract Documents and all applicable laws; (iii) Subcontractor has waived any and all claims for direct and/or indirect additional costs not contained in approved Change Orders to the date of the Retainage reduction, and released all lien claims associated with the Work; (iv) Subcontractor has paid its sub-subcontractors and suppliers on a current basis and there are no sums due and owing its sub-subcontractors except on a current basis; (v) the Project remains free of liens by Subcontractor or anyone under contract to Subcontractor; (vi) AVB has no good faith reason to believe that Subcontractor is involved in any dispute which may result in claims against the Project; and (vii) Owner's consent is granted. The continuing reduction of Retainage will be subject to Subcontractor's conformance with these conditions with each application for payment.

Notwithstanding anything herein to the contrary, any reduction in Retainage shall be at AVB's sole discretion and AVB shall not be obligated to reduce the Retainage.

5.8 Subcontract to Remain in Balance: At all times, the Subcontract Price shall remain in balance with the cost of Work remaining to be completed. "In balance" means the undistributed proceeds of Subcontract Price, including Retainage, equal or exceed the amount necessary to pay for Work already completed but unpaid and all Work yet to be completed. If such undistributed proceeds, at any time, become insufficient for such purpose, regardless of how such insufficiency occurs, Subcontractor will continue its Work and any further payments of the Subcontract Price shall be suspended or withheld by AVB until the Subcontract Price is in balance with the cost of the Work remaining to be completed.

5.9 Final Payment: Final Payment, consisting of the unpaid balance of the Subcontract Price, shall be made only after all of the following events have occurred:

- (a) Final Completion of Subcontractor's Work as Final Completion is defined by the Contract Documents and in strict conformance with this Subcontract;
- (b) acceptance of Subcontractor's Work by AVB, the Owner and the Designer;
- (c) satisfactory evidence that Subcontractor has paid in full all persons furnishing labor or materials in connection with Subcontractor's Work;
- (d) satisfactory evidence that neither Subcontractor nor any person claiming under or through Subcontractor has filed or has the right to file a lien or claim against the Owner, AVB, AVB's surety, if any, or the premises on which the Project is located;
- (e) delivery of all guarantees, warranties, maintenance bonds, instruction manuals, test reports, performance charts, diagrams, as-built drawings, keys and similar items required by the Contract Documents or this Subcontract with respect to Subcontractor's Work;
- (f) execution and delivery by the Subcontractor, in a form acceptable to AVB, of a General Release and Waiver of Claims running in favor of AVB and the Owner; and
- (g) Final Payment by Owner to AVB for Subcontractor's Work. Final Payment by the Owner to AVB shall be an express condition precedent to AVB's duty to make Final Payment to the Subcontractor.

5.10 Use of Payments by Subcontractor: Subcontractor shall use the sums paid to it pursuant to this Subcontract solely for the purpose of fulfilling its responsibilities and obligations under this Subcontract. Any and all funds paid to Subcontractor hereunder constitute trust funds in the hands of Subcontractor to be applied, before application to any other purpose, to the payment of the following costs incurred by Subcontractor pursuant to this Subcontract:

- (a) sub-subcontractors, laborers, suppliers, materialmen or other persons employed by Subcontractor;
- (b) utilities furnished and taxes imposed;
- (c) premiums on surety bonds, other bonds and insurance required by this Subcontract;
- (d) any indemnity obligations of Subcontractor;
- (e) union or association dues, assessments and fringe benefits; and
- (f) all other costs of Subcontractor's performance of its responsibilities and obligations under this Subcontract.

5.11 Joint Checks and Direct Payment: At AVB's sole discretion, payments may be made by check payable jointly to Subcontractor and its creditors. If Subcontractor fails to promptly pay, when due, for any labor, fringe benefits, services, materials or equipment furnished in connection with the performance of its Work, or fails to make other payments required by the Subcontract, AVB, after three (3) days' written notice to Subcontractor, may make such payments directly to the subject creditor and recover the amount thereof from Subcontractor directly, or deduct such payments from the Subcontract Price.

5.12 **Advancement of Payments:** AVB, in its sole discretion, may advance the date of any payment, including Final Payment.

5.13 **Additional Rights of AVB to Withhold Payment:** In addition to any other rights of AVB to withhold payment, AVB may reduce or withhold payment from Subcontractor for the same reasons and under the same circumstances that Owner may withhold payment under the Contract Documents between AVB and the Owner, whether or not the Owner had reduced or withheld AVB's payment.

5.14 **Payment not Evidence of Performance:** No payment for Subcontractor's Work shall be conclusive evidence of satisfactory performance or completion of the Work, either in whole or in part, and no payment, including Final Payment shall be construed as an acceptance of defective or faulty or improper Work or materials, nor shall it release Subcontractor from any of its obligations under this Subcontract, nor shall entrance upon or use of the Project by the Owner constitute acceptance of defective or faulty or improper Work.

5.15 **Payment Limited to Approved Work:** AVB will not pay for any work beyond the Scope of this Agreement without written approval pursuant to Section 18 as authorized by AVB, or AVB's designated representative. Work that may be considered an "extra" or exceeds the Scope of Work must be approved in writing in advance.

SECTION 6 Contract Deliverables

6.1 **Contract Deliverables and Updating Thereof:** Contemporaneously with the execution of this Subcontract, Subcontractor shall provide and deliver to AVB the following contract deliverable items which Subcontractor certifies to AVB as being currently true, accurate and correct with no material changes:

- (a) A copy of its contractor's license, if required;
- (b) A copy of its Sales Tax Registration Certificate;
- (c) A copy of its payment and performance bonds, if required;
- (d) A list of all tiers of sub-subcontractors and suppliers (including their addresses and the amounts due or to become due them), said list shall be updated with each Progress Payment Application showing all additions, deletions and substitutions to such list, the contract deliverables for each new sub-subcontractor, supplier of any tier, and revised amounts due or to become due;
- (e) A copy of any certificate of qualification required by the Contract Documents or applicable law or regulation, including but not limited to certification as a Minority Business Enterprise or other status requiring certification;
- (f) The list of Project staff required by Section 11.2; and
- (g) All other information required by this Subcontract to be submitted contemporaneously with its execution.

6.2 **Conditional Assignment and Undertaking to Continue Performance:**

- (a) **Obligation of Subcontractor.** Subcontractor shall not enter into any agreement to subcontract any portion of the Subcontractor's Work or to purchase, rent or lease any services, materials or equipment unless it obtains from each such sub-subcontractor, supplier, vendor, lessor or materialman, an agreement of Conditional Assignment and Undertaking to Continue Performance on behalf of AVB.
- (b) **Obligation of Sub-subcontractor, Supplier, Vendor or Materialman.** Each sub-subcontractor, supplier, vendor, lessor and materialman shall execute the Conditional Assignment and Undertaking to Continue Performance, agreeing that it will continue and complete the performance of its contractual obligations on behalf of AVB at no additional cost to AVB beyond the cost stated in its contract with the Subcontractor.
- (c) **Activation by AVB.** Upon written notice by AVB to any sub-subcontractor, supplier, vendor, lessor or materialman, of an occurrence of default by Subcontractor under this Subcontract, without obligation on its part to

make an independent inquiry as to the accuracy of the assertion of such default, or to receive proof of the default, the Conditional Assignment and Undertaking to Continue Performance to AVB shall become effective, and the sub-subcontractor, supplier, vendor, lessor or materialman shall immediately undertake to continue performance as directed by AVB.

(d) **Limitation of AVB's Obligation.** In the event AVB activates the performance required by the Conditional Assignment and Undertaking to Continue Performance, all prior payments received by the sub-subcontractor, supplier, vendor, lessor or materialman, or paid to the Subcontractor for the Work of the sub-subcontractor, supplier, vendor, lessor or materialman shall be credited toward any sums due pursuant to the terms of the Conditional Assignment and Undertaking to Continue Performance. AVB shall not be obligated to perform or discharge any past obligation, duty or liability of Subcontractor under any contract or agreement, by reason of the existence of or exercise of the Conditional Assignment and Undertaking to Continue Performance.

(e) **Provisions Included in Sub-subcontracts, Purchase Orders and Other Contracts and Agreements.** Subcontractor shall include the provisions of this Section 6 in all its subcontracts, purchase orders and other contracts and agreements relative to Subcontractor's Work. Subcontractor shall furnish proof of compliance with this Section 6.2 in a form satisfactory to AVB.

SECTION 7 Bonding of Subcontractor

7.1 Requirement of Bonds: If Section 1.10 requires Subcontractor to be bonded, Subcontractor shall obtain all required bonds in accordance with the following provisions:

(a) Subcontractor shall provide a performance bond and a labor and material payment bond with AVB as obligee, each in the amount of one hundred percent (100%) of the Subcontract Price.

(b) All bonds must be executed by a corporate surety which:

(1) is licensed to transact business in the State of Michigan;

(2) is named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the U.S. Treasury Department and all of Subcontractor's bonds for this Project are in compliance with the limitations stated in the Circular; and

(3) has an A.M. Best & Company rating of "A" or better;

(c) Bonds shall be provided on a standard A312-2010 Performance Bond & Payment Bond forms or equivalent as approved by AVB. Bond forms shall be accompanied by an appropriate power of attorney from the surety, and be otherwise acceptable to AVB.

(d) All bonds shall be furnished upon the earlier of the date of execution of this Subcontract or the commencement of any Work by Subcontractor on the Project.

(e) The Subcontractor acknowledges that the cost of all bond premiums, including additional premiums for any increase in the Subcontract Price or any extension of the Subcontractor's Work, has been included in the Subcontract Price.

(f) No change, alteration or modification to the terms and conditions of this Subcontract, change to Subcontractor's scope of work or to the terms or manner of payment, shall in any way exonerate or release, in whole or in part, any surety on any bond furnished by or on behalf of Subcontractor.

(g) If required to do so by AVB, prior to commencement of any Work required hereunder, Subcontractor shall obtain and furnish to AVB a copy or counterpart of this Subcontract which shall have been endorsed in writing by an authorized representative of the surety company, specifically approving this Subcontract.

(h) No payment of any portion of the Subcontract Price shall be due to Subcontractor until all of the provisions of this Section have been fully satisfied.

7.2 Subsequent Requirement of Bonds: AVB reserves the right at any time prior to commencement of Subcontractor's Work to require Subcontractor to furnish bonds for the full amount of the Subcontract Price.

7.3 Changes Will Not Invalidate Bonds: Additions to or reductions from the Subcontract Price, or other modifications of Subcontractor's Work shall not invalidate or impair any rights of AVB under any bond furnished by Subcontractor.

7.4 Requirements in Absence of Bonds: If AVB does not initially require Subcontractor to furnish bonds, but prior to or after commencement of Subcontractor's Work, Subcontractor's financial condition materially changes, in addition to any other right of AVB hereunder, AVB may elect one or more of the following alternatives:

- (a) require Subcontractor to submit a current audited financial statement in a form acceptable to AVB;
- (b) require Subcontractor to furnish bonds in an amount and form acceptable to AVB;
- (c) require Subcontractor to furnish an irrevocable letter of credit or other security acceptable to AVB; or
- (d) increase Retainage to an amount sufficient to protect AVB's interests.

7.5 Contractor's Rights: If Subcontractor fails to furnish a bond to AVB in acceptable form within the time specified in Section 6.1, or if Subcontractor fails to comply with Sections 7.1, 7.3, 7.4(a, b or c), or consent to the provisions of Section 7.4(d) above, AVB may, upon five (5) days written notice, terminate the Subcontract in accordance with the provisions of Section 30.

SECTION 8 Insurance Requirements

8.1 Insurance Coverage: Prior to the commencement of the Subcontractor's Work, Subcontractor shall purchase and maintain in force the following insurance coverages:

- (a) Minimum Coverages
 - (1) General Liability to include:
 - (i) Occurrence Form
 - (ii) Premises Operations
 - (iii) Explosion, Collapse and Underground
 - (iv) Products/Completed Operations Hazard included for 2 years after completion of Work by Subcontractor
 - (v) Contractual Liability Coverage
 - (vi) Broad Form Property Damage Liability Coverage
 - (vii) Independent Contractors Coverage
 - (viii) Personal Injury Coverage with Contractual and Fellow Employees Exclusions Deleted
 - (ix) Aggregate Limits Per Project Endorsement
 - (2) Automobile Liability to include:
 - (i) Comprehensive Form
 - (ii) Owned Auto Coverage
 - (iii) Non – Owned Auto Coverage
 - (iv) Hired Auto Coverage
 - (3) Worker's Compensation & Employer's Liability Coverage:
 - (4) Umbrella Coverage

(b) Limits of Liability Required

- | | |
|---|---|
| (1) <u>General Liability</u> | \$1,000,000. Per Occurrence and \$2,000,000 General Aggregate for Personal Injury and Property Damage |
| (2) <u>Automobile Liability</u> | \$1,000,000. Combined Single Limit for Bodily Injury and Property Damage Per Occurrence |
| (3) <u>Worker's Compensation and Employer's Liability</u> | Statutory
\$500,000. Each accident
\$500,000. Each employee
\$500,000. Policy limit |
| (4) <u>Umbrella Coverage</u> | \$1,000,000 minimum coverage |

(c) AVB and the Owner are to be designated as additional insureds on a primary basis, utilizing forms CG2010 (11/85) or a combination of CG2010 (10/01 or 07/04) and CG 2037 (10/01 or 07/04) or its equivalent under the general liability, automobile liability, and any excess liability coverage. Additional insured coverage to be maintained for two (2) years following the completion date of the entire project. Proof of insurance is to be verified by inclusion of a Certificate of Insurance.

(d) General Liability Insurance, Automobile Liability Insurance and Employer's Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella policy. Coverage provided under any excess or umbrella policy must be as broad as the coverage provided by the primary policy(s).

(e) All insurance coverages required of Subcontractor hereunder shall contain standard contractual indemnity and waiver of subrogation clauses, riders, or endorsements, as the case may be. Subcontractor hereby waives all rights of recovery which it might otherwise have against AVB, and/or its officers, partners, agents, employees, invitees, guests, or licensees, for any injury or damage which is covered by insurance coverages required to be kept by Subcontractor as provided herein, notwithstanding that such damage may result from the negligence or fault of AVB, or its officers, partners, agents, employees, invitees, guests, or licensees; provided, however, that this waiver shall be effective only with respect to losses or damages occurring where this waiver will not affect the right of the insured to recover under the applicable policy of insurance.

(f) All insurance policies must be secured from insurance carriers which:

- (1) are licensed to transact business in the State of Michigan;
- (2) have an A.M. Best & Company rating of "A-" or better carrier on a standard ISO CGL form or equivalent with no endorsements or modifications limiting coverage for contractual, damage to work performed by subs, residential construction, earth movement or XCU.;
- (3) must include a per project general aggregate endorsement.

8.2 Adequacy of Insurance: AVB does not represent that the insurance coverage specified herein, whether in scope of coverage or amounts of coverage, are adequate to protect the obligations of Subcontractor under this Subcontract and Subcontractor shall be solely responsible for any deficiencies thereof. Nothing in this Section 8 shall be deemed to limit Subcontractor's liability under this Subcontract. If Subcontractor determines for its own purposes that it requires insurance coverages in excess of the coverage specified above, nothing in this Subcontract shall prevent Subcontractor, at its own expense, from purchasing insurance coverages in excess of the coverage required by this Subcontract.

8.3 Insurance Certificates: Subcontractor, within seven (7) days of NOI or subcontract and prior to starting its Work, shall furnish evidence of insurance for at least the coverage and amounts set forth above. All insurance shall be maintained in the form and with a company (or companies) satisfactory to AVB. Subcontractor's Certificate of Insurance shall be filed with AVB on a form acceptable to AVB, and shall require that AVB be notified in writing thirty (30) days prior to cancellation, modification or non-renewal of any insurance policy listed in Subcontractor's Certificate.

SECTION 9
Schedule and Coordination

9.1 Time of the Essence: Time is of the essence in this Subcontract. Subcontractor recognizes that AVB and/or the Owner may sustain severe financial loss if the Project or any part of it is delayed because Subcontractor fails to perform any or all of its Work in accordance with this Subcontract, the Contract Documents or the Project Schedule (as hereinafter defined).

9.2 Commencement of Subcontractor's Work: Subcontractor shall commence its Work when directed by AVB to do so and, subject to the conditions set forth in Section 9.4, shall diligently and continuously prosecute, perform and complete its Work so that neither AVB nor any other person or entity will be delayed by any act or omission of Subcontractor in completing its Work on the Project in accordance with this Subcontract, the Contract Documents, the Project Schedule (as hereinafter defined) and any revisions thereto. If, for any reason, Subcontractor's Work is ordered stopped, Subcontractor shall resume its Work within the time stated in a written notice from AVB.

This Subcontract must be executed within seven (7) days of receipt, prior to Subcontractor's commencement of the Work. Subcontractor's submission of construction submittal or presence on the Project Site, whichever occurs first shall be deemed Subcontractor's implied consent to the terms and conditions of this Subcontract and the other Contract Documents. Within twenty (20) days of Subcontractor's commencement of its Work, Subcontractor shall file a Notice of Furnishing as provided under the Construction Lien Act, being Michigan Public Act 497 of 1980, as amended.

9.3 Subcontractor's Plan and Schedule: The Subcontractor shall participate and cooperate in the development of AVB's project schedule (the "Project Schedule") by providing information for the scheduling of the times and sequence of operations required for its Work to meet AVB's overall schedule requirements. Subcontractor shall continuously monitor AVB's Project Schedule so as to be fully familiar with the timing, phasing and sequence of operations of its Work and of other work on the Project, and shall execute the Work in accordance with the requirements of the Project Schedule, including any revisions thereto and shall meet all interim or final milestone dates included in the Project Schedule. Subcontractor shall submit within fourteen (14) days after execution of this Subcontract, on a form acceptable to AVB, for AVB's approval, Subcontractor's detailed plan and schedule for performing and coordinating its Work in conformance with the Project Schedule and other work on the Project. Subcontractor represents and warrants that, subject only to suspensions, delays, or accelerations specifically authorized by this Subcontract and the Construction Documents, Subcontractor's Work will be complete on the Completion Date, as defined in Section 1.8.

9.4 Priority of Work: AVB shall have the right at any and all times, prior to and after the commencement of work, to modify the Project Schedule, to suspend, delay, or accelerate, in whole or in part, the commencement or execution of Subcontractor's Work or any portion thereof or to vary the sequence thereof, to reasonably decide the time, order and priority of the various portions of Subcontractor's Work, and all other matters relating to the scheduling and coordination of Subcontractor's Work with other work on the Project. As the Project progresses, AVB also shall have the right to modify the time, order and priority of the various portions of Subcontractor's Work, and all other matters relating to the scheduling and coordination of Subcontractor's Work, in order to respond to job conditions and/or achieve timely completion of the entire Project. Subcontractor shall not be entitled to any additional compensation for decisions or changes made by AVB pursuant to this Section 9.4 except as provided in Section 9.7.

9.5 Coordination: Subcontractor shall coordinate its operations with all other contractors, subcontractors and trades working on the Project. Before beginning its Work and during the duration of its Work, Subcontractor shall perform the requirements of Section 13.1 including written reports to AVB. Failure by Subcontractor to report any such defective or uncompleted work by others shall constitute a waiver and estoppel of any claim by Subcontractor for any damage or for any claim for an extension of time arising out of such defective or uncompleted work. Further, Subcontractor shall be liable to AVB for any damage caused AVB by Subcontractor's failure to report any such defective or uncompleted work by others.

9.6 Reports and Information: Subcontractor shall furnish to AVB:

- (a) All required reports, including shop drawings, technical data, samples, test reports, safety forms or other information promptly as required by this Subcontract, the Contract Documents, the Project Schedule or requested by AVB.

9.7 Overtime and Additional Shifts: If ordered by AVB in writing, Subcontractor shall work overtime and/or add additional manpower or shifts:

(a) If Subcontractor is not behind schedule, AVB will pay Subcontractor the actual additional premium portion of wages for overtime or additional shift work not then included in the Subcontract Price, plus any taxes on such additional wages, but no overhead or profit;

(b) If Subcontractor, through its own sole or partial fault or neglect, is behind schedule, AVB may order Subcontractor to increase its manpower or to work, at Subcontractor's expense, any overtime or additional shifts or take any other action necessary to expedite the Work to meet the Project Schedule.

SECTION 10

Delays and Extensions of Time

10.1 Delays Caused by Others: AVB shall not be liable to Subcontractor for any delay, disruption or interference to Subcontractor's Work caused by the act, omission, neglect or default of the Owner or the Designer or their respective contractors, subcontractors, employees, servants, agents or consultants, or by reason of fire or other casualty, or on account of riots or of strikes, or other combined action of the workmen or others, or on account of any acts of God, or any other cause beyond AVB's direct control; provided, however, AVB will cooperate with Subcontractor in submitting against the Owner or Designer, any just claim arising therefrom which is permitted by the Contract Documents and applicable law. Subcontractor shall reimburse AVB for all reasonable expenses incurred by AVB in submitting any such claims on behalf of Subcontractor. Subcontractor shall not claim any time extension, cost reimbursement, compensation or damages for any delay, disruption or interference to the Work except to the extent that AVB is entitled to a corresponding time extension, cost reimbursement, compensation or damages from the Owner or Designer under the Contract Documents and applicable law. Subcontractor recovery shall be limited to the amount, if any, which AVB, on behalf of Subcontractor, actually receives from the Owner or the Designer on account of such claim. Payment by the Owner or Designer shall be by an express condition precedent to AVB's duty of payment to Subcontractor.

10.2 Delays Caused Solely by AVB: Should Subcontractor's Work be delayed, disrupted or interfered with solely as a result of the willful acts or omissions of AVB or anyone employed by AVB on the Project, then, at AVB's sole discretion, AVB shall provide Subcontractor either:

(a) an extension of time for completion of the Work equal to the actual impact of the delay, disruption or interference on the critical path of Subcontractor's Work; or

(b) additional compensation as provided in Section 9.7(a), but only if a written claim for delay is submitted to AVB within forty-eight (48) hours from the time of the commencement of such delay, disruption or interference.

Failure to provide such written claim within the prescribed time period shall result in an irrevocable waiver of any such claim. The extension of time or the additional compensation provided pursuant to this Section 10.2 shall be the sole and exclusive remedy that Subcontractor shall have against AVB for delays, disruptions or interferences caused by the acts or omissions of AVB or anyone employed by AVB on the Project, and Subcontractor shall have no right or entitlement to additional compensation, whether direct or indirect, for such delays, disruptions or interferences. Subcontractor expressly waives the right to bring against AVB any claim for damage for delay, acceleration, interference, extra work resulting from such delay, extended overhead, wage escalation, overtime wage provisions, lost opportunity, or lost profit or financial impact on Subcontractor's other projects. AVB's exercise of its rights pursuant to Section 9.4 shall not constitute a delay, disruption or interference with Subcontractor's Work under this Section 10.2.

10.3 Limitations on Subcontractor With Respect to Claims for Extensions of Time or Damages:

In no event shall Subcontractor be entitled to any extension of time or any damages for any delays, disruptions or interferences caused or contributed to in any way by Subcontractor.

SECTION 11

Subcontractor's Project Staff

11.1 Project Staff: Subcontractor shall maintain, at all times, a competent and adequate staff for the proper management, administration, coordination, supervision and superintendency of Subcontractor's Work and Subcontractor's compliance with all applicable laws. Once approved by AVB, the Subcontractor's project manager and/or superintendent shall not be changed, or his/her duties altered, without AVB's written approval, unless any such person ceases to be employed by Subcontractor, in which event such person shall be replaced with an individual against whom AVB has no reasonable

objection. Subcontractor shall remove from the Project any person employed by or under the control of Subcontractor whom AVB or the Owner determines to be unsatisfactory.

11.2 Contractor's Approval: In accordance with Section 6.1, if requested, Subcontractor shall submit to AVB, in writing for AVB's written approval, the name, classification, experience and project function of each person Subcontractor intends to assign to its Project staff.

11.3 Subcontractor's Project Representative: Subcontractor shall have a full-time representative on the Project who shall be fully responsible for the performance of the Subcontractor's Work and who shall have full authority to act on Subcontractor's behalf in all matters necessary for proper coordination, direction and technical administration of Subcontractor's Work including strict conformance with all applicable safety laws, rules, regulations, ordinances and requirements. Such representative shall attend meetings called by AVB and report on the progress of Subcontractor's Work. Instructions, directives and orders issued to this representative shall be binding upon Subcontractor. Such information, instructions, directions and orders may be confirmed in writing to Subcontractor, but the lack of such confirmation, other than with respect to Change Orders or other communications specifically required by this Subcontract or the Contract Documents to be in writing, shall not affect in any way the validity or binding nature of such information, instructions, directions or orders issued.

SECTION 12 Construction Submittals

12.1 Submission: Subcontractor shall prepare and submit to AVB a submittal log and schedule, which shall be updated weekly, showing the status of all required shop drawings, samples, technical data, and other required submittals. Subcontractor shall submit all shop drawings, samples, technical data, and other required submittals in strict accordance with this Subcontract, the Contract Documents and AVB's schedule requirements so that Subcontractor's shop drawings, samples, technical data, and other submittals shall not delay its own Work, the work of AVB or any other person or entity. For each proposed product, Subcontractor shall submit to AVB for approval one (1) clearly legible electronic file for each of the required shop drawings, technical data, and other required submittals items together with certification clearly stating that the product meets the needs and performance requirements of the intended use. Subcontractor shall submit to AVB for approval four (4) sets of physical samples unless indicated otherwise, accurately representing the required product with requested color, finish, style, etc.

12.2 Review by AVB: In reviewing Subcontractors' shop drawings, samples, technical data, and other submittals required hereunder, AVB is not responsible for verifying dimensions or field conditions. Review by AVB shall not be construed as a detailed check of the shop drawings, samples, technical data, and/or other required submittals and shall not relieve the Subcontractor, manufacturer, fabricator or supplier from the responsibility for the proper matching and fitting of the Work with contiguous work and the coordination of the Work with other work being performed on the Project Site, which obligation and responsibility shall continue until completion of the Work.

SECTION 13 Contiguous Work

13.1 Contiguous Work: Should the proper and accurate performance of the Subcontractor's Work depend upon the proper and accurate performance of other work not covered by this Subcontract, the Subcontractor shall carefully examine such other work, determine whether it is in fit, ready and suitable condition for the proper and accurate performance of the Work hereunder, use all means necessary to discover any defects in such other work, and before proceeding with the Work hereunder, report promptly any such improper conditions and defects to AVB, in writing, and allow AVB a reasonable time to have such improper conditions and defects remedied.

Contractor shall inspect the area of work to insure that surfaces are ready for installation. Conflicts and surface conditions which are unacceptable for installation of materials within this trades scope shall be brought to the CM's attention immediately. Proceeding with the work constitutes acceptance of a surface as suitable for proper installation and full warrantee of the material being installed.

SECTION 14 Dimensions

14.1 Dimensions: Notwithstanding the dimensions on the Plans, Specifications and other Contract Documents it shall be the obligation and responsibility of the Subcontractor to take such measurements as will insure the proper matching and fitting of the Work covered by this Subcontract with contiguous work.

SECTION 15
Freight Charges and Shipments

15.1 Freight Charges and Shipments: The Subcontractor, in making or ordering shipments, shall not consign or have consigned materials, equipment or any other items in the name of AVB. AVB is under no obligation to make payment for charges on shipments made by or to the Subcontractor but may, at its option, pay such charges, in which case the Subcontractor shall reimburse AVB for the amount of such payments plus ten percent (10%) overhead and ten percent (10%) profit.

SECTION 16
Cleaning

16.1 Subcontractor's Duty to Clean Up: Subcontractor, daily, shall clean and remove from the Project and lawfully dispose of any dirt, marks, grease, surplus materials, obstructions, hindrances or debris resulting from Subcontractor's Work. With respect to the disposal of Regulated Substances (as defined hereafter), Subcontractor shall strictly comply with the requirements of Section 26.2. Upon completion of its Work, Subcontractor shall clean, wash, remove protective coatings and leave its Work in such cleaned condition as this Subcontract and the Contract Documents require. Subcontractor also shall remove all of its remaining debris, equipment and temporary facilities from the Project.

16.2 AVB's Rights if Subcontractor Does Not Adequately Clean: If Subcontractor fails to perform necessary or required clean up during the course of and at completion of its Work, upon twenty-four (24) hours written notice to Subcontractor, AVB may provide such clean up work on behalf of Subcontractor and charge Subcontractor for the costs incurred, plus ten percent (10%) for overhead and ten percent (10%) for profit. The right of AVB to clean up includes the right to provide clean up during evening, night and weekend hours, in which case any shift differential or overtime wage premiums will be included in the charges assessed against Subcontractor. In addition, if Subcontractor fails to perform its clean up obligations under this Subcontract, AVB shall have the right to stop Subcontractor's Work until clean up is achieved. This right to stop work is in addition to AVB's other rights and remedies. AVB shall give Subcontractor prompt written notice of any backcharge and may deduct such clean up charges from any payment due Subcontractor.

SECTION 17
AVB-Furnished Equipment, Labor or Materials

17.1 Responsibilities of the Parties: In the event AVB furnishes to or for the use of Subcontractor any labor, materials, equipment (such as concrete pumps, trucks, cranes, earth movers and the like), or temporary facilities (such as storage sheds, water, heat, light, power, toilets, hoists, elevators, scaffolding, weather protection, pumps, watchman service and the like), such furnishing or use shall be limited to the extent specifically stated in this Subcontract and/or the Contract Documents. Whenever Subcontractor uses the same, Subcontractor, its successors and assigns, shall defend, indemnify, and hold harmless AVB, its agents and employees, from and against all liability for injuries to persons, damage to property, and any and all costs and expenses, including attorneys' fees and disbursements, resulting from any claims against AVB, its agents and employees, arising out of such use or occupancy by Subcontractor. With respect to any such use or occupancy, Subcontractor shall strictly comply with all applicable laws. Unless otherwise specifically stated, whenever any labor, materials, equipment or temporary facilities are provided by AVB, they are provided "as is." With respect to any such equipment or temporary facilities Subcontractor shall:

- (a) assume care, custody and control of such equipment or temporary facilities;
- (b) maintain, service and repair such equipment or temporary facilities;
- (c) use such equipment or temporary facilities in strict compliance with this Subcontract, the Contract Documents and all applicable laws; and
- (d) return such equipment or temporary facilities to AVB in the same condition Subcontractor received same.

Such equipment or temporary facilities will be available to Subcontractor where initially located by AVB with any relocation to be performed by and at the expense of Subcontractor. Further, Subcontractor shall be responsible for returning such equipment or temporary facilities to that initial location or such other location as may be directed by AVB

17.2 **Charges to Subcontractor:** The cost to Subcontractor of any equipment, labor or materials furnished by AVB pursuant to Section 17.1 and the method of payment thereof shall be set forth in a written attachment to this Subcontract signed by AVB and Subcontractor.

SECTION 18 Changes to the Work

18.1 **AVB May Order Changes:** AVB may, without invalidating this Subcontract or any bond given hereunder, order additions, deletions or other modifications to Subcontractor's Work, without notice to any surety. Adjustments to the Subcontract Price or to the time for completion of Subcontractor's Work, if any, shall be made in accordance with the provisions of the Contract Documents, when applicable, and in accordance with Sections 18.2 through 18.5 of this Subcontract.

18.2 **Review of Change Requests:** Upon receipt of a request to change the Work issued by the Owner, the Designer or by AVB, Subcontractor shall review each such request and provide to AVB, in writing, within seven (7) days from receipt of the request, a specific analysis as to the impact, if any, on Subcontractor's Work, including any adjustment to the Subcontract Price or time for completion. In support of each analysis for a change in Subcontractor's Work, Subcontractor shall provide AVB with the following supporting back-up data: sub-subcontractor quotations and price estimates, material counts and costs, labor rates and time estimates, equipment rental rates and time estimates, and any other information or documents which AVB may request. In each of its sub-subcontracts, Subcontractor shall require each sub-subcontractor to provide the same supporting data for any changes. If requested by AVB, Subcontractor shall furnish detailed records in a form satisfactory to AVB of the costs or savings actually realized as a result of any change.

18.3 **Price and Time Changes Valid Only by Written Change Order:** The Subcontract Price and time for completion will not be changed except upon written Change Order from AVB. Changes in the Subcontract Price shall not be included in Subcontractor's payment applications until a written Change Order has been fully executed by AVB incorporating the price change into the Subcontract Price.

18.4 **No Claim for Lost Profit:** If any change reduces the quantity of Subcontractor's Work, Subcontractor shall not make any claim for loss of anticipated profit.

18.5 **Dispute as to Price:** If, with respect to any change in Subcontractor's Work, AVB and Subcontractor cannot agree upon an adjustment to the Subcontract Price or time for completion, AVB shall have the right to order Subcontractor to proceed with the change in accordance with AVB's instructions and Subcontractor shall so proceed to carry out the changed Work and shall record the cost of the changed work as required by the Contract Documents or as ordered by AVB. Any claim for additional compensation or additional time shall be processed in accordance with Section 21. If Subcontractor contests the time of completion provided for any change, it must file a claim for an extension of time pursuant to the provisions of Section 10 or it will waive its right to contest the time for completion provided for the change.

18.6 **Construction Change Directives:** In the event the Contract Documents provide for Construction Change Directives or similar mechanisms for changes in the Work, Subcontractor shall comply with all requirements of the Contract Documents with respect thereto.

18.7 **Change Order or Directive Required:** AVB will not pay for any work beyond the Scope of this Agreement without a pre-approved written Change Order or Change Directive authorized by AVB. Work that may be considered and "extra" must be approved in writing in advance.

SECTION 19 Risk of Loss and Title

19.1 **Risk of Loss to Subcontractor:** AVB shall not be liable to Subcontractor for any loss or damage to Subcontractor's Work, materials, tools, equipment or supplies, however caused. Subcontractor assumes all risk of loss for its Work, regardless of whether Subcontractor has been paid for such Work. Unless otherwise specifically provided in this Subcontract, AVB is not responsible for providing any protection of Subcontractor's Work or any protective service for Subcontractor's benefit.

19.2 **Title:** Subcontractor warrants that title to all Work, materials and equipment will pass to the Owner either by incorporation in the Project or upon the receipt of payment by the Subcontractor for such Work, materials and equipment,

whichever occurs first, free and clear of all liens, claims, security interests or encumbrances; and that any materials or equipment were not acquired by the Subcontractor, or by any other person performing Work at the Project or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Subcontractor or such other person.

SECTION 20 Mechanic's Liens or Claims

20.1 Subcontractor's Duty to Discharge Liens or Claims: If any sub-subcontractor, laborer, materialman or supplier of the Subcontractor or any other person directly or indirectly acting for, through or under it or any of them files or maintains a lien or claim, construction lien, mechanics' lien, stop notice or an attested account or otherwise, or a lien under the Mechanics Lien laws of the State of Michigan (or if the Project is located in a state other than Michigan, the Mechanics Lien laws of the state where the Project is located), a lien under the Construction Lien Act, being Michigan Public Act 497 of 1980, as amended, or any other any other lien or encumbrance, against the Project or premises of the Project or any part thereof or any interests therein or any improvements thereon or against any monies due or to become due from the Owner to AVB or from Owner to Subcontractor, for or on account of any work, labor, services, materials, supplies, equipment or other items performed or furnished for or in connection with the Work or under any Change Order or supplemental written agreement for extra or additional work in connection with the Project, the Subcontractor shall cause such liens and claims to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within ten (10) days from the date of the filing of such liens or claims, and upon its failure to do so AVB shall have the right, in addition to all other rights and remedies provided under this Subcontract and the Contract Documents, or by law, to cause such liens or claims to be satisfied, removed or discharged by whatever means the Owner or AVB chooses, at the entire cost and expense of the Subcontractor (such cost and expense to include legal fees and disbursements). AVB's rights under this Section 20 shall include, but are not limited to, the right to post a bond pursuant to Section 116 of the Construction Lien Act, being Michigan Public Act 497 of 1980, as amended, which, in AVB's sole discretion, identifies either AVB, Subcontractor, or both as the obligee. The Subcontractor shall defend, indemnify, protect and hold harmless AVB and the Owner from and against any and all such liens and claims and actions brought or judgments rendered thereon, and from and against any and all loss, damages, liability, costs and expenses, including reasonable attorneys' fees and disbursements, which AVB and/or the Owner may sustain or incur in connection therewith.

SECTION 21 Subcontractor Claims

21.1 Obligation to Continue Work: Regardless of any claims or disputes, or any action taken or to be taken under any Section of this Subcontract with respect to such claims or disputes, whether for an extension of time or for additional compensation or otherwise, Subcontractor at all times shall proceed diligently with the prosecution of its Work.

21.2 Claims for Which AVB Can Seek Recovery from the Owner: If Subcontractor asserts a claim for damages under circumstances that entitle AVB to make a claim for damages against the Owner under the Contract Documents, Subcontractor shall file with AVB a written claim that meets the requirements of Section 21.5 and is in the form required by the Contract Documents for claims by AVB against the Owner no later than five (5) days prior to the time when AVB is required to file any such claim with the Owner. If no specific deadline for claims is contained in the Contract Documents, the Subcontractor shall submit such claim within seven (7) days of the commencement of the event allegedly giving rise to the claim.

21.3 Claims for Which AVB Cannot Seek Recovery from the Owner: If Subcontractor asserts a claim for alleged damages which is prohibited by the Contract Documents, or asserts such claim under circumstances that do not entitle AVB to make a claim for such damages against the Owner under the Contract Documents, upon written notice from AVB, Subcontractor shall withdraw the claim. If Subcontractor's claim meets the conditions of Section 10.2, Subcontractor shall proceed in accordance with the provisions of Section 10.2.

21.4 Failure to File Waives Claim: Failure by Subcontractor to deliver any claim for alleged damages to AVB within the time limits set forth in this Section 21 and/or to provide the required damage amounts and other specific information and supporting documentation shall constitute a waiver and estoppel of Subcontractor's rights with respect to such claim for alleged damages.

21.5 Claim Preparation: With respect to any claim submitted by Subcontractor under this Section 21, Subcontractor shall prepare the claim in writing and in a format acceptable to AVB. At a minimum, the claim shall include detailed information

concerning the alleged claim-causing event, Subcontractor's damages which allegedly resulted from the event, how the event allegedly caused such damages, and steps allegedly taken by Subcontractor to mitigate the extent of its alleged damages. The claim shall separately list each type of damage allegedly incurred (but in no event damages barred or waived by the Contract Documents or this Subcontract) and give the most accurate estimate possible of the amount for each type of alleged damage. Upon request by AVB, Subcontractor will provide any other information concerning the claim. By submitting a claim, Subcontractor grants AVB the right to examine or audit all of Subcontractor's accounting records, job records, payroll records and other records and documents which may have any bearing on the claim.

21.6 Subcontractor Cooperation: Subcontractor shall cooperate in the prosecution of claims filed by Subcontractor, and shall reimburse AVB for all expenses and costs incurred by AVB in connection with the preparation and prosecution of such claims against Owner or others who may be responsible, including without limitation, costs of litigation, arbitration or alternative dispute resolution proceedings and reasonable attorneys fees and disbursements. Nothing in this Section shall require AVB to assert any claim against the Owner on Subcontractor's behalf which, in AVB's reasonable judgment, is fraudulent, contrary to law, barred by this Subcontract, the Contract Documents or made by Subcontractor in bad faith.

21.7 Claims Against AVB Arising out of Subcontractor's Work: If the Owner or a third party brings a claim against AVB and such claim arises directly, or indirectly, in whole or in part from Subcontractor's Work or other involvement in the Project, Subcontractor shall:

- (a) cooperate with AVB and its counsel in the defense of such claim;
- (b) provide, at Subcontractor's expense, all witnesses, expert testimony, documents and other assistance AVB reasonably believes necessary for such defense; and
- (c) indemnify and hold AVB harmless from the cost of any judgment or settlement of such claim, AVB's reasonable costs in responding to the claim, and AVB's reasonable attorneys' fees and disbursements.

21.8 Subcontractor Bound by Claims Procedures: Subcontractor expressly consents to be bound to AVB to the same degree and manner that AVB is bound to the Owner by all decisions and determinations made in accordance with any procedure for the resolution of claims provided in the Contract Documents. The provisions of this Section shall be binding upon Subcontractor, whether or not Subcontractor records or files a mechanic's lien, stop notice, or action against any bond posted by AVB or files suit thereon. Subcontractor acknowledges that this Section waives or limits rights it otherwise would have in connection with such liens, stop notices or bonds.

SECTION 22

Compliance with Law and Permits

22.1 The Subcontractor shall obtain and pay for all necessary permits, certificates, registrations, tap fees, construction costs and licenses pertaining to or required for the Work and shall comply with all Federal, State, Municipal and local laws, ordinances, codes, rules, regulations, standards, orders, notices and requirements, including, but not limited to, those relating to safety, discrimination in employment, fair employment practices or equal employment opportunity, whether or not specifically provided for by this Subcontract or the Contract Documents, without additional charge or expense to AVB, and shall also be responsible for, and correct, at its own cost and expense, any violations thereof resulting from or in connection with the performance of its Work. The Subcontractor shall at any time, upon demand, furnish such proof as AVB may require showing such compliance and the correction of such violations. The Subcontractor shall defend, hold harmless and indemnify AVB from and against any and all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, costs and expenses, including legal fees and disbursements, caused or occasioned directly or indirectly by the Subcontractor's failure to comply with any of said laws, ordinances, rules, regulations, standards, orders, notices or requirements or to correct such violations.

SECTION 23

Labor Relations

23.1 **Labor Matters:** Subcontractor shall comply with the following provisions:

- (a) **Jurisdictional Dispute.** If any item of Work shall be the subject of a jurisdictional dispute as to the employees or craft to be used for such Work, Subcontractor shall lawfully resolve such dispute and if arbitrated, abide by the

decision, holding AVB and the Owner free of involvement in the dispute, and if time is lost by the dispute, extra work days will be considered only pursuant to the provisions of Section 21.

(b) **Wage Scale.** Subcontractor will pay not less than the wage scale and fringe benefits, if any, required by the Contract Documents or, if applicable, prevailing wage determinations, and will comply with all applicable wage laws, statutes and regulations.

(c) **Reporting.** Certified copies of payrolls, if required, will be submitted to AVB upon request. Subcontractor will comply with all applicable laws relating to wages and hours, reporting obligations, and other applicable labor requirements established by this Subcontract, the Contract Documents, any governmental agency and any agreement legally binding upon Subcontractor.

If Subcontractor fails to comply with any requirement of this Section 23, upon written notice of such non-compliance from AVB, Subcontractor shall commence to cure such non-compliance within twenty-four (24) hours and shall achieve compliance within seventy-two (72) hours of receipt of the written notice. Any failure by Subcontractor to do so after written notice to comply shall constitute a material breach of this Subcontract and AVB, in addition to its other rights in the event of a breach of this Subcontract, shall have the right to terminate this Subcontract for cause.

23.2 Control Over Employees: Subcontractor shall maintain control over all its employees, subcontractors, suppliers and others for whom Subcontractor is responsible. Subcontractor shall remove or cause to be removed from the Project any person or entity for whom Subcontractor is responsible who is determined by the Owner, the Designer or AVB to be detrimental to the Project. Subcontractor shall not employ any person who wrongfully causes, or who is likely to wrongfully cause, strikes, work stoppages or other actions detrimental to the Project.

23.3 Strike: In the event of a strike, picketing or other actions resulting from Subcontractor's Work, after forty-eight (48) hours notice to Subcontractor, AVB may take any lawful steps necessary to complete Subcontractor's Work. Subcontractor shall take all necessary action to terminate any strike or picketing and will, on an ongoing basis, take all necessary actions to assure harmonious labor relations, including compliance with all labor agreements and jurisdictional decisions. If AVB establishes a gate reserved for use by Subcontractor (and any other subcontractor with whom a labor dispute exists), Subcontractor will use such gate and continue its Work without interruption or delay. All employees, sub-subcontractors, materialmen, suppliers, and agents of Subcontractor must use such reserved gate until further notice from AVB.

SECTION 24

Equal Employment Opportunity, Affirmative Action and ADA

24.1 Non-Discrimination: Subcontractor, at its own expense, shall conform to the nondiscrimination and affirmative action policies and plans required by this Subcontract, the Contract Documents and with all laws applicable to the Project.

24.2 Compliance With Other Laws: The following Federal laws and regulations are incorporated into the Subcontract by reference with respect to any Project to which such laws and regulations apply. Unless exempted, the Equal Opportunity Clause found at 41 CFR §60-1.4; the affirmative action for disabled veterans and veterans of the Vietnam Era clause found at 41 CFR §60-250.4; the affirmative action compliance program clause found at 41 CFR §60-1.7; the equal opportunity for workers with disabilities clause found at 41 CFR §60-741.5; the minority business enterprises subcontract program, found at 41 CFR §1-1.1300 et seq.; the labor surplus area subcontracting program; the small business subcontracting program; the women-owned business enterprises program; and the construction contractor's affirmative action requirements found at 41 CFR §60-4.1, et seq. Subcontractor is responsible for full compliance, as applicable, by itself, its agents, employees, materialmen and sub-subcontractors.

24.3 Hiring and Employment: In the hiring of employees for the performance of the Work under this Subcontract, neither Subcontractor nor any person acting on behalf of Subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, disability, citizenship or any other status protected under the laws of the State or locality where the Work is to be performed, discriminate against any citizen who is qualified and available to perform the work to which the employment relates. Furthermore, neither Subcontractor nor any person on its behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Subcontract on account of race, religion, color, sex, national origin or ancestry or any other status protected under the laws of the State or locality where the Work is to be performed.

24.4 Reports: Subcontractor shall furnish all information and reports required by this Subcontract, the Contract Documents, AVB and applicable laws. Subcontractor will permit access to its books, records and accounts for the purpose of investigation to ascertain such compliance. Unless exempted by law, Subcontractor will include the requirements of this Section 24 in every subcontract or purchase order so that this Section 24 will be binding upon each sub-subcontractor or supplier of the Subcontractor. When required, Subcontractor will deliver to AVB from itself and from any sub-subcontractor or supplier of the Subcontractor, all required certifications of compliance or other information required by this Subcontract, the Contract Documents and any applicable laws. Subcontractor shall deliver all information or reports required by this Section 24.4 to AVB's Project Office, to AVB's address listed in Section 1.4 and to any other person or entity to whom such information must be provided according to any applicable law or the Contract Documents.

24.5 Compliance With the ADA: In the event Subcontractor believes it necessary to modify its sequence of Work, the work environment or means and methods to comply with the applicable requirements of the Americans With Disabilities Act (ADA), Subcontractor shall notify AVB in writing of the proposed modification. AVB shall have reasonable time to review the request and may seek advice and consent from the Owner and Designer before responding in writing to Subcontractor. All costs of the proposed modifications shall be borne by Subcontractor, including impact costs to other subcontractors or other parts of the Project, including claims for delay, interference, disruption, or acceleration. No modification shall be implemented by Subcontractor until Subcontractor receives written consent from AVB. Nothing herein shall be construed to make AVB or Subcontractor responsible for conformance of the Designer's Design to ADA requirements.

24.6 Failure to Comply: If Subcontractor, its employees, sub-subcontractors, suppliers or any other person or entity responsible to Subcontractor fails to comply with any applicable law or requirement of this Section or the Contract Documents, upon written notice of such noncompliance from AVB, Subcontractor shall commence to cure such non-compliance within twenty-four (24) hours and shall achieve compliance within seventy-two (72) hours of receipt of the written notice. Any failure by Subcontractor to do so after written notice to comply shall constitute a breach of this Subcontract and AVB, in addition to its other rights in the event of a breach of this Subcontract, shall have the right to terminate this Subcontract.

SECTION 25 Safety

25.1 Conformance by Subcontractor: With respect to safety, Subcontractor, at its own expense, shall conform to and comply with all requirements of this Subcontract, the Contract Documents and applicable laws promulgated by any governmental authority, including, without limitation, the applicable requirements of the AVB Health & Safety Program and the Occupational Safety and Health Act of 1970 as amended ("OSHA"). AVB shall require Subcontractor to submit a safety plan, the submission of which shall in no way relieve Subcontractor of its responsibilities under this Section. Subcontractor is specifically warned of, and cautioned about, the hazards of heavy lifting, ladder work, scaffold work, lift work, sprayer work, chemical exposure, fume exposure, splash exposure, high-pitched sprayer noise and overhead work, and any and all other perils and hazards relating to the performance of the Work hereunder, and for the need for Subcontractor's employees to plan and act accordingly for the Work. These warnings must be included in safety plan and be made a part of Subcontractor's Project safety program. Subcontractor shall specifically caution and instruct each of its employees at the Project Site of the existence of the potential hazard of back injury; falling from a ladder, scaffold, or lift; injury from backing equipment; injury from high pressure hose failure; injury from paint chemical exposure to skin; lung injury from fume inhalation; eye injury from pain splash or spray; hearing impairment due to high noise levels; head injury and neck strain due to overhead work; and the need for employees to plan and act accordingly. Each of Subcontractor's employees must be "Specifically Task Trained", as that term is defined by OSHA, with special emphasis placed on the foregoing hazards. Subcontractor will take all necessary precautions to protect against any conditions caused by Subcontractor's Work or other involvement in the Project which involve any risk of bodily harm to persons or risk of damage to property. Subcontractor continuously shall inspect its Work, materials and equipment to discover any such conditions and shall be solely responsible for discovering and correcting any conditions. AVB may order Subcontractor to stop any Work that AVB deems unsafe until corrective measures acceptable to AVB have been implemented. However, any action by AVB shall not be construed to extend to direct control over or charge of the acts or omissions of Subcontractor, its subsubcontractors, their agents or employees or any other persons performing Subcontractor's Work or portions thereof. Subcontractor shall be responsible for all costs and delays incurred by AVB as a result of any such stoppage of the Work.

25.2 Protection of AVB: Subcontractor acknowledges that, by law, it must comply with applicable safety laws, including but not limited to the Occupational Safety and Health Administration (OSHA), Safety and Health regulations for the construction industry and all general industry standards applicable thereto. Subcontractor further acknowledges that it is

knowledgeable with respect to compliance with such laws, and shall take all necessary steps toward compliance during the term of this Subcontract. Subcontractor at all times shall be the controlling employer responsible for the safety programs and precautions applicable to its own work and the activities of others' work in areas designated to be controlled by Subcontractor. Subcontractor shall control the activities of its employees and any other persons or entities for whom Subcontractor is responsible. Subcontractor shall be liable for each hazardous condition which Subcontractor either creates or controls, whether or not the persons exposed to the hazard are Subcontractor's employees or agents. Subcontractor shall also be responsible for preventing its employees and persons or entities for which it is responsible from being exposed to any hazardous or dangerous condition. In the event an action is undertaken against AVB for violations of law as a result of conditions allegedly created or controlled in whole or in part by Subcontractor or its sub-subcontractors, regardless of tier, or any other person or entity for whom Subcontractor is responsible, Subcontractor shall indemnify AVB and hold AVB harmless from all costs or damages which may be assessed as the result of such action, including attorneys' fees and disbursements incurred in the defense or appeal of such action.

25.3 Report: Unless any law or requirement of the Contract Documents requires earlier notice, Subcontractor shall deliver copies of all accident and injury reports (from itself and from all of its sub-subcontractors or suppliers) to AVB and any other person or entity entitled thereto by applicable law, this Subcontract or the Contract Documents within six (6) hours of occurrence. Upon request, copies of all Safety Programs and any other reports concerning safety shall be delivered to AVB and any other person or entity entitled thereto by applicable law or the Contract Documents.

25.4 Safety Representative: From commencement of Subcontractor's Work and at all times while Subcontractor's Work is being performed, Subcontractor shall have on the Project Site a First Aid Certified representative and a designated, qualified and competent Safety Representative empowered to act on behalf of Subcontractor in all matters pertaining to safety. Subcontractor shall also require each of its sub-subcontractors to have on the Project Site a designated, qualified and competent Safety Representative empowered to act on behalf of that sub-subcontractor in all matters pertaining to safety. Before commencing its Work, Subcontractor shall furnish AVB written notice of the appointment of its Safety Representative. Before permitting any sub-subcontractor to commence work on the Project Site, Subcontractor shall furnish AVB with written notice of the appointment of the sub-subcontractor's Safety Representative. If Subcontractor or any sub-subcontractor appoints a new or different Safety Representative during the course of the Project, Subcontractor shall furnish AVB written notice of the appointment of the new Safety Representative before that Safety Representative assumes the Safety Representative duties. Subcontractor and its sub-tier contractors shall conduct regular and frequent safety inspections of their work areas and take corrective measures as warranted.

25.5 Drug Testing: If required by the Contract Documents, by law or at AVB's request, AVB shall have the right to require Subcontractor and all of its sub-subcontractors to prove that all of their employees working at the Project Site have satisfactorily passed a drug screening test. All costs associated with administering the drug screening tests shall be borne by the Subcontractor.

SECTION 26

Hazardous and Other Regulated Substances

26.1 Definition of Regulated Substance: As used in this Subcontract, "Regulated Substance" includes oil, petroleum or any fraction thereof, a hazardous substance, a hazardous waste, a waste containing a hazardous substance, a contaminant, a pollutant or a regulated chemical, as any of those terms may be defined by the United States Environmental Protection Agency or in one or more of the following laws: The Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601 et seq., (CERCLA), as amended, the Resource Conservation and Recovery Act (RCRA), as amended, The Emergency Planning and Community Right-To-Know Act of 1986, also known as SARA Title III or EPCRA, the Toxic Substances Control Act (TSCA), as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Federal Insecticide, Fungicide and Rodenticide Act, as amended, the Federal Water Pollution Control Act, as amended, the Oil Pollution Act of 1990, as amended, the Safe Drinking Water Act, as amended, the Occupational Safety and Health Act, as amended, or any other federal, state or local law, rule, ordinance, statute, regulation, permit or other governmental restriction regulating environmental, health or safety matters.

26.2 Disposal of Regulated Substances: Subcontractor shall not dispose of a Regulated Substance on the Project Site. Subcontractor shall not commingle Regulated Substances with materials or waste of AVB, the Owner, another subcontractor or any other person or entity performing work on the Project Site. Subcontractor shall provide separate disposal receptacles to be used exclusively for the storage or temporary disposal of Regulated Substances. Such separate disposal receptacles must be approved by law for the particular Regulated Substance(s) which will be placed in them. When storing, treating or disposing of Regulated Substances, Subcontractor and Subcontractor's waste hauler shall comply with

all applicable laws. Subcontractor shall identify its waste haulers and provide AVB with a copy of each manifest or other document relating to the storage, transportation and disposal of a Regulated Substance from the Project Site.

26.3 No Use Without Written Consent: Subcontractor shall not use any Regulated Substance on the Project unless the use of such Regulated Substance is specifically required or permitted by this Subcontract or the Contract Documents. Any such use of any Regulated Substance must strictly comply with all provisions of the Contract Documents and all applicable laws.

26.4 Conditions of Use: If, as required or permitted by this Subcontract or the Contract Documents, a Regulated Substance of a type which by law an employer is required to notify its employees is used on the Project by Subcontractor, its sub-subcontractors, or anyone else directly or indirectly employed by Subcontractor, then prior to exposure of any person on the site to such substance, Subcontractor shall notify AVB in writing of the chemical composition thereof in sufficient detail and time, including, but not limited to providing a Material Safety Data Sheet for such substance, to permit compliance with any applicable laws by AVB, other subcontractors and other persons or entities on the Project and to permit AVB to coordinate Subcontractor's activities with other trades in order to avoid any cost or impact to AVB or any other person or entity.

26.5 Indemnification by Subcontractor: If Subcontractor uses a Regulated Substance on the Project, Subcontractor shall indemnify and hold harmless AVB, the Owner, and any other person or entity required by this Subcontract or the Contract Documents from any claims whatsoever arising out of Subcontractor's use, storage, treatment or disposal of any Regulated Substance. Subcontractor shall reimburse AVB for any attorneys' fees, disbursements or other costs paid or incurred by AVB as a result of such claims, including, but not limited to, the fees of any expert or consultant. Alternatively, AVB, at AVB's option, may deduct any such attorney's fees, disbursements or other costs, including, but not limited to, the fees of any expert or consultant, from the Subcontract Price.

26.6 Discovery of Regulated Substances by Subcontractor: If Subcontractor encounters substances on the Project which Subcontractor reasonably believes to be asbestos, polychlorinated biphenyls (PCB's) or other Regulated Substances and which are in a form, location or quantity such that Subcontractor, AVB or Owner are required to take action under applicable law, Subcontractor shall immediately stop the Work in the area affected and immediately report, in writing, the condition to AVB. Work in the affected area shall not resume until the Owner or the Designer has certified that the area is a safe workplace and that any asbestos, polychlorinated biphenyls (PCB's) or other Regulated Substances as defined in Section 26.1 which were discovered have been removed or controlled in accordance with applicable law.

26.7 Claims Relating to Delay and Regulated Substances: If Subcontractor has claims resulting from delays, disruptions or interferences because of the discovery of asbestos, polychlorinated biphenyls (PCB's) or other Regulated Substances pursuant to Section 26.6 above, Subcontractor hereby grants AVB the sole and exclusive right to determine:

- (a) when such claims should be pursued;
- (b) the extent to which such claims should be pursued; and
- (c) the method by which such claims should be pursued.

Subcontractor expressly waives and releases any other rights to damages or additional compensation as a result of or relating to delays, disruptions or interferences arising from the discovery of asbestos, PCB's or other Regulated Substances pursuant to Section 26.6 above.

SECTION 27

Authorized Representatives and Notices

27.1 Notices to AVB: All notices to AVB shall be in writing, addressed to AVB's Authorized Representative and delivered to its address shown on Section 1.4. A copy of any such notice also shall be delivered to AVB's Project Site office.

27.2 Notices to Subcontractor: All notices to Subcontractor shall be in writing, addressed to Subcontractor's Authorized Representative and delivered to the address shown on Section 1.5.

27.3 Effective Date of Notices: Notices shall be effective immediately upon delivery to the party to whom it is addressed.

27.4 **Definition of Delivery:** Delivery of notices may be by hand, email, facsimile transmission or overnight express courier. Copies of notices may be delivered by mail. Receipt should be confirmed.

27.5 **Authorized Representatives:** Only company-authorized representatives of AVB or Subcontractor may send or receive notices or sign Change Orders, extra work orders, or back charges.

SECTION 28

Inspection and Defective Work

28.1 **Inspection and Defective Work:** The Subcontractor shall at all times provide sufficient, safe and proper facilities for the inspection of the Work by the Owner, AVB, the Designer and their authorized representatives in the field, at shops or at any other place where materials or equipment for the Work are in the course of preparation, manufacture, treatment or storage. The Subcontractor shall, within twenty-four (24) hours after receiving written notice from AVB, proceed to take down all portions of the Work and remove from the Project premises all materials, whether worked or unworked, which the Designer or AVB shall condemn as unsound, defective or improper or are in any way failing to conform to this Subcontract or the Contract Documents, and the Subcontractor, at its own cost and expense, shall replace the same with proper and satisfactory work and materials and make good all work damaged or destroyed by or as a result of such unsound, defective, improper or nonconforming work or materials or by the taking down, removal or replacement thereof, including damage to the work of others.

SECTION 29

Guarantee

29.1 **Scope of Guarantee:** Subcontractor guarantees:

- (a) That Subcontractor's Work, including without limitation, labor, materials, equipment and its functionality and performance will be free from defects, conform to and meet the requirements of this Subcontract and the Contract Documents; and
- (b) That Subcontractor will furnish any separate guarantee or extended warranty for Subcontractor's Work, or portions thereof, required by this Subcontract or the Contract Documents.

29.2 **Subcontractor's Obligation:** Subcontractor, at its own expense, in accordance with the requirements of the Contract Documents and this Subcontract, shall repair or replace any portion of the Work which proves defective within two (2) years (or such longer period as may be specified in the Contract Documents, provided in any separate guarantee or extended warranty, or required by law) from the date of acceptance of the Work as defined in the Contract Documents and repair any damage to other work caused by the defect or the repair of the defect. If Subcontractor fails to begin or complete any repair or replacement within the time directed by AVB, AVB may undertake, but shall not be obligated for Subcontractor's benefit to undertake, such repair or replacement at Subcontractor's expense, and Subcontractor shall reimburse AVB within ten (10) days of demand for any costs incurred, including ten percent (10%) for overhead and ten percent (10%) for profit.

SECTION 30

Termination for Cause

30.1 **Termination for Cause:** If at any time Subcontractor:

- (a) fails or refuses to supply sufficient labor, materials, tools, equipment or supervision;
- (b) fails or refuses to perform the Work promptly and diligently;
- (c) fails to meet the Project Schedule;
- (d) causes delay, interference or stops the work of AVB or any other contractors or subcontractors;
- (e) fails or refuses to perform any of its obligations under this Subcontract or the Contract Documents; or

(f) becomes bankrupt, insolvent or goes into liquidation (either voluntarily or under an order of a court of competent jurisdiction), or makes a general assignment for the benefit of creditors, or otherwise evidences financial incapacity;

then in any of such events, each of which shall constitute a material default under this Subcontract, AVB shall have the right, in addition to any other rights and remedies provided under this Subcontract, the Contract Documents or by law, after three (3) days' written notice to Subcontractor:

- (1) to order Subcontractor to add manpower or to work overtime or additional shifts; and/or
- (2) to delay payment of all or part of the Subcontract Price until Subcontractor conforms to the Project Schedule; and/or
- (3) to take over and perform through itself or through others the Subcontractor's Work until, in AVB's sole judgment, Subcontractor's default has been cured, and deduct from the Subcontract Price the cost thereof plus an overhead fee of ten percent (10%) and a profit of ten percent (10%); and/or
- (4) to augment Subcontractor's forces with additional labor and materials until, in AVB's sole judgment, Subcontractor's default has been cured and deduct from the Subcontract Price the cost thereof plus an overhead fee of ten percent (10%) and a profit of ten percent (10%); and/or
- (5) to terminate all or any portion of Subcontractor's right to proceed under the Subcontract and to enter upon the premises and take possession, for the purpose of completing that portion of the Work affected by such termination, of all Subcontractor's records, materials, tools and equipment and all other items relating to that subject portion of Subcontractor's Work on the Project, including materials stored off-site for use in completing Subcontractor's Work. In case of such termination of the employment of the Subcontractor, the Subcontractor shall not be entitled to receive any further payment under this Subcontract with respect to such portion of the Work until that portion of the Work shall be wholly completed to the satisfaction of AVB, the Owner and the Designer and shall have been accepted by them, at which time, if the unpaid balance of the amount to be paid under this Subcontract shall exceed the cost and expense incurred by AVB in completing said portion of the Work, such excess shall be paid by AVB to the Subcontractor as set forth below; but if such cost and expense shall exceed such unpaid balance, then the Subcontractor shall pay the difference to AVB as set forth below. Such cost and expense shall include not only the cost of completing said portion of the subject portion of Work to the satisfaction of AVB, the Owner and the Designer, and of performing and furnishing all labor, services, materials, equipment, and other items required therefor, but also all losses, damages, costs and expenses, including reasonable attorneys' fees and disbursements sustained, incurred or suffered by reason of or resulting from the Subcontractor's default. If the unpaid balance of the Subcontract Price exceeds the cost incurred by AVB, plus an overhead fee of ten percent (10%) and a profit of ten percent (10%), and no claims arising from Subcontractor's Work are threatened or pending, Subcontractor will be paid the excess; but if such cost plus overhead of ten percent (10%) and profit of ten percent (10%) exceeds the unpaid balance, then Subcontractor shall pay the difference to AVB within ten (10) days of written demand by AVB.

30.2 Additional Damages Chargeable to Subcontractor: In addition to the costs specified in Section 30.1 above, AVB may deduct from the Subcontract Price and/or otherwise recover from Subcontractor an amount sufficient to indemnify AVB and hold AVB harmless from any loss or liability arising out of Subcontractor's Work or other involvement in the Project, including, but not limited to, the costs of any claims by others resulting from Subcontractor's acts or omissions including any judgment or award to or settlement with the claiming party and reasonable attorneys' fees and disbursements incurred defending or resolving such claims.

30.3 Termination of Owner by AVB: In the event AVB terminates its contract with the Owner due to default on the part of the Owner, Subcontractor shall not be entitled to recover from AVB more than the sum actually received by AVB from Owner for work performed and materials, supplies and equipment furnished by Subcontractor pursuant to this Subcontract. The rights and remedies of AVB, other subcontractors and third parties shall be taken into consideration in AVB's determination of Subcontractor's pro rata share of any payments received by AVB from the Owner.

30.4 Termination of AVB by Owner: In the event the Owner terminates its contract with AVB, AVB may deliver a notice of termination to Subcontractor, whereupon Subcontractor shall follow AVB's directions which may include a direction to Subcontractor to stop work and terminate its Work pursuant to Section 31. If the Owner elects to assume AVB's rights and obligations under this Subcontract, then, in that event, Subcontractor shall perform the remainder of its duties under this Subcontract for Owner, and will look solely to Owner for further payments and performance of all outstanding obligations which AVB would have owed to Subcontractor under this Subcontract. The duties, rights and remedies of AVB and Subcontractor pursuant to this Section shall be governed by the rights and remedies provided by applicable law, the Contract Documents and this Subcontract.

30.5 Receipt of Payment from Owner Condition Precedent for Payment for Termination: The right of Subcontractor to payment from AVB for any termination shall be subject to the provisions of Section 5 and the Contract Documents. In no event shall Subcontractor be entitled to recover unexpended overhead, unearned profit, or damages as the result of any such termination.

SECTION 31 Termination for Convenience

31.1 AVB's Right to Terminate: The performance of the Work may be terminated at any time in whole, or from time to time in part, by AVB for its convenience. Any such termination shall be effected by delivery to Subcontractor of a written notice ("Notice of Termination") specifying the extent to which performance of the work is terminated and the date upon which termination becomes effective.

31.2 Subcontractor's Obligations Upon Termination: After receipt of a Notice of Termination, and except as otherwise directed by AVB, Subcontractor shall, in good faith, and to the best of its ability, do all things necessary, in the light of such notice and of such requests in implementation thereof as AVB may make, to assure the efficient, proper closeout of the terminated work (including the protection of Owner's property). Among other things, the Subcontractor shall, except as otherwise directed or approved by AVB:

- (a) stop the Work on the date and to the extent specified in the Notice of Termination;
- (b) place no further orders or subcontracts for services, equipment or materials except as may be necessary for completion of such portion of the Work as is not terminated;
- (c) terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
- (d) assign to AVB, in the manner and to the extent directed by AVB, all of the right, title and interest of Subcontractor under the orders or subcontracts so terminated, in which case AVB shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (e) with the approval of AVB, settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts; and
- (f) deliver to AVB, when and as directed by AVB, all records, documents and all property which, if the Work had been completed, Subcontractor would be required to account for or deliver to AVB, and transfer title to such property to AVB to the extent not already transferred.

31.3 Equitable Adjustment: In the event of such termination, there shall be an equitable reduction of the Subcontract Price to reflect the reduction in the Work, and no cost incurred after the effective date of the Notice of Termination shall be reimbursable unless it relates to carrying out the unterminated portion of the Work, or taking required closeout measures.

31.4 AVB's Right to Convert to Termination for Convenience: In the event any termination of Subcontractor for cause under this Subcontract is later determined to have been improper, the termination shall be automatically converted to a termination for convenience, and the Subcontractor shall be limited in its recovery strictly to the compensation provided for in this Section.

SECTION 32
Damages for Delay

32.1 Delay Damages: Subcontractor shall be liable to AVB for all damages, including any liquidated damages payable to the Owner for delays caused in whole or in part by Subcontractor or Subcontractor's employees, agents, sub-subcontractors, material suppliers or any other person or entity for whose acts Subcontractor may be liable. In addition to such damages assessed against AVB by Owner, Subcontractor also shall be liable for all other actual damages to AVB caused or contributed to by delays caused in whole or in part by Subcontractor or Subcontractor's employees, agents, sub-subcontractors, material suppliers or any other person or entity for whose acts Subcontractor may be liable. In the event damages incurred by AVB are caused both by Subcontractor and another entity for whose acts Subcontractor is not liable, AVB shall have the right to reasonably apportion said damages among the responsible parties, and such apportionment shall be binding on the Subcontractor.

SECTION 33
Indemnification

33.1 Indemnification for Claims: Subcontractor shall defend, indemnify and hold harmless AVB, the Owner and such other persons or entities as the Contract Documents or this Subcontract may require against any and all claims arising directly or indirectly out of Subcontractor's Work or other involvement with the Project, including, but not limited to, claims for:

- (a) any alleged or actual infringement or violation of any letters patent, patent right or license;
- (b) injury to or death of any person, including employees of Subcontractor;
- (c) damage to property;
- (d) defects in materials or workmanship;
- (e) costs of travel, lodging and related expenses for personnel and workers;
- (f) cost of transportation for freight or express charges for materials or equipment related to Subcontractor's Work;
- (g) violations of any laws, including, without implied limitation, the requirements noted in Sections 22, 23 and 24 hereunder;
- (h) violations of Section 26 relating to Hazardous or Regulated Substances;
- (i) failure of Subcontractor to pay its obligations as is required by this Subcontract;
- (j) any other act or omission of Subcontractor, its officers, agents, employees, servants, subsubcontractors or material suppliers; or
- (k) damage to other contractors, subcontractors, suppliers or any other person or entity.

It is the intent of this Subcontract that Subcontractor defend, indemnify and hold harmless AVB, the Owner and such other persons or entities as the Contract Documents may require to the fullest extent permitted by law, even if it is alleged that AVB, the Owner, or such other persons or entities individually or collectively contributed to the alleged wrongdoing, were individually or collectively, actively or passively negligent or are individually or collectively liable because of a nondelegable duty. Subcontractor is not obligated to defend, indemnify and hold harmless AVB or Owner for their sole negligence or willful misconduct if such indemnification is contrary to law, but if such indemnification is not contrary to law, then Subcontractor shall defend, indemnify and hold harmless AVB, the Owner and such other persons or entities as the Contract Documents and this Subcontract may require for any liability arising directly or indirectly out of Subcontractor's Work or other involvement with the Project to the fullest extent permitted by law, including indemnification for the sole negligence of AVB, the Owner and/or such other persons or entities as this Subcontract or the Contract Documents may require. Subcontractor has included these indemnification obligations in its Subcontract Price.

33.2 Security and Insurance: In addition to the insurance coverage required by Section 8, Subcontractor shall provide any additional security AVB deems reasonably necessary to fully protect AVB, the Owner and such other persons or entities as the Contract Documents may require against any loss or liability arising out of Subcontractor's Work or other involvement in the Project. AVB may retain from payments due or to become due under the Subcontract an amount sufficient to indemnify and hold harmless AVB, the Owner and such other persons or entities as the Contract Documents may require from any liability or damage, including reasonable attorneys' fees and disbursements.

33.3 Indemnification Obligations are Independent: Subcontractor's indemnification obligations set forth in this Section 33 and elsewhere in this Subcontract are independent and separately enforceable.

33.4 Condition Precedent to Payment: The full and faithful performance of Subcontractor's indemnification obligations is an express condition precedent to Subcontractor's right to receive payment in whole or in part of the Subcontract Price. AVB's indemnity rights granted by this Subcontract are in addition to all other remedies to which AVB is entitled by this Subcontract, by the Contract Documents or by law.

33.5 Subcontractor Responsibility to Defend, Indemnify and Hold Harmless AVB: Whenever this Subcontract requires Subcontractor to defend, indemnify and hold AVB, the Owner, or any other person or entity harmless, from a claim by any person or entity arising out of this Subcontract, Subcontractor shall pay to AVB:

- (a) the amount of any claim as determined by Settlement, Judgment or Award;
- (b) the costs incurred by AVB with respect to any negotiations, arbitration, litigation, or other proceedings involving AVB, arising out of or relating to this Subcontract, including but not limited to:
 - (1) all activities reasonably necessary for the defense of any such matter;
 - (2) all efforts necessary to enforce the terms of this Subcontract or to protect the interests of AVB; and
- (c) all reasonable attorneys' fees and disbursements expended or incurred by AVB.

Subcontractor shall pay to the person or entity entitled to payment under this Subcontract or the Contract Documents, all amounts required by this Subcontract or the Contract Documents.

33.6 Subcontractor's Responsibility for Attorneys' Fees, Disbursements, Costs, etc.: Whenever reasonable attorneys' fees, disbursements or costs are referred to in this Subcontract, such terms include, without limitation, the following expenses paid or incurred by AVB or for which AVB is liable to others under the Contract Documents or applicable law:

- (a) attorneys' fees;
- (b) paralegal fees;
- (c) appraisers' fees;
- (d) documentary evidence and expert witness costs;
- (e) arbitrators' fees and expenses;
- (f) court reporter charges;
- (g) publication costs;
- (h) title searches and examinations;
- (i) filing fees, recording fees, copying charges and the like; travel, lodging and meal expenses;
- (j) reasonable hourly charges for the time of AVB's personnel; and
- (k) any other reasonable costs incurred by AVB.

33.7 Obligation of Subcontractor to Defend AVB: Subcontractor's obligation to indemnify and hold AVB harmless is in addition to Subcontractor's obligation to defend AVB. With respect to any obligation of Subcontractor to indemnify and hold AVB harmless, AVB, at its sole option, also may tender its defense to Subcontractor. If AVB tenders its defense to Subcontractor, then Subcontractor shall defend AVB at Subcontractor's expense. AVB shall have the right to approve any counsel Subcontractor intends to use in such defense, which approval shall not be unreasonably withheld. If AVB chooses to defend itself, then Subcontractor shall pay AVB's costs of defense as provided in Sections 33.5 and 33.6. If, after tendering its defense to Subcontractor, AVB becomes dissatisfied as to the quality or diligence of the defense provided by Subcontractor or if conflicts of interest arise during the course of the defense provided by Subcontractor, then AVB may employ its own counsel to participate in its defense or to resume its own defense and Subcontractor shall pay AVB the costs of such defense as provided in Sections 33.5 and 33.6.

SECTION 34 Choice of Law and Dispute Resolution

34.1 Choice of Law: This Subcontract shall be governed by and construed in accordance with the laws of the State of Michigan.

34.2 Dispute Resolution: If the Subcontractor has a dispute with AVB regarding the application or interpretation of any provision of this Subcontract or the breach thereof, the Subcontractor shall, within ten (10) days after such dispute arises, submit its claim, in writing, to AVB attaching all supporting documentation. Should additional documentation or information be requested by AVB, the Subcontractor shall provide such documentation and/or information promptly. Within thirty (30) days after receiving the Subcontractor's written claim and all requested documentation and information, AVB shall respond with its position and proposed resolution of the dispute. Should the Subcontractor reject AVB's proposed resolution, the Subcontractor shall proceed as described below. As a condition precedent to initiating any court or arbitration proceeding as provided for below, the Subcontractor must first comply fully with the provisions set forth herein. Nothing in this Section 34.2 shall be construed as changing or extending any time period stated elsewhere in this Subcontract with respect to when Subcontractor is required to provide notice to AVB concerning an event for which Subcontractor seeks either an adjustment to the Subcontract Price or an extension of its time of performance.

34.3 AVB's Right to Select Forum: AVB shall have the sole and exclusive right to determine whether any dispute, controversy or claim arising out of or relating to this Subcontract, or breach thereof, shall be submitted to a court of law or arbitrated under the auspices of the American Arbitration Association in accordance with its Construction Industry Arbitration Rules. The venue of such court action or arbitration proceeding shall be in the jurisdiction in which the Project is located, or in Kalamazoo County, Michigan, as AVB, in its sole discretion, may elect to the exclusion of all other jurisdictions. The Subcontractor must make a written request to AVB to determine whether the dispute shall be submitted to a court or to arbitration. AVB shall respond to the Subcontractor's request within ten (10) business days after receipt thereof. AVB's response shall identify whether the matter will be submitted to a court or to arbitration and the Subcontractor shall submit itself to the personal jurisdiction and venue of the court or arbitration proceeding selected by AVB, to the exclusion of all other forums and jurisdictions. The Subcontractor waives any and all rights to contest AVB's selection of forum, including, but not limited to, any rights based upon forum non conveniens.

(a) In the event of a dispute between the Owner and AVB or AVB and any other person or entity in which Subcontractor's Work is at issue, AVB may join Subcontractor into any proceeding in which such dispute is pending.

(b) In the event AVB selects arbitration, the award of the arbitrators shall be final and binding, and judgment upon the award may be entered in any court having jurisdiction thereof. The Arbitrator(s) shall follow the law. The Arbitrator(s) shall have no jurisdiction to hear claims for or award punitive damages.

(c) In the event the matter is submitted to a court, AVB and Subcontractor hereby agree to waive their right to trial by jury and covenant that neither of them will request trial by jury in any such litigation.

34.4 Limitation of Issues: The Subcontractor acknowledges that should a dispute proceed pursuant to this Section, then the only issues that the Subcontractor may raise in such proceedings are those that were specifically included in its written claim submitted in accordance with Section 34.2. Failure to specifically describe an issue in the written claim within the time limits provided constitutes a waiver of that claim and shall preclude the Subcontractor from raising such claim in any court or arbitration proceeding. Should any dispute between AVB and the Subcontractor proceed to arbitration or to court,

that forum shall award to the prevailing party all of its attorney's fees, disbursements or costs as defined in Section 33.6 incurred in connection with the prosecution or defense of the dispute. Pending final resolution of any dispute, the Subcontractor shall continue to fulfill all of its obligations under this Subcontract.

SECTION 35

Miscellaneous Provisions

35.1 Invalidity of any Provision: If any part of the Subcontract is declared invalid by a court of competent jurisdiction or by a valid arbitration proceeding, the part held invalid shall not in any manner affect the validity of the remaining parts of the Subcontract and all such remaining parts shall be held to be the full agreement of the parties.

35.2 Neutral Interpretation: The form of Subcontract has been prepared initially by AVB. However, in the event of any dispute over its meaning or application, the Subcontract shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, either party.

35.3 Successors and Assigns: The Subcontract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

35.4 Relationships: Except as expressly provided herein, nothing contained in this Subcontract shall create any contractual or third party beneficiary relationship between any parties other than AVB and Subcontractor.

35.5 No Oral Modifications: This Subcontract may be amended only by a written document signed on behalf of AVB and Subcontractor by authorized persons designated in Section 27.

35.6 Merger of Previous Proposals into this Subcontract: All previous proposals, promises and understandings relating to the subject matter of this Subcontract, whether written or oral, are null and void and have been replaced by the terms and conditions contained in this Subcontract, unless referred to in or attached to this subcontract.

35.7 Captions: The captions in this Subcontract are for convenience only and are not a part of this Subcontract.

35.8 Waiver: The waiver by AVB of any breach or default of this Subcontract by Subcontractor shall not be construed as a waiver of any other breach or default of the same or any other terms or conditions of this Subcontract. Forbearance from demanding strict compliance with any term or provision of this Subcontract shall not operate as a waiver and shall not prevent AVB from subsequently demanding strict compliance therewith.

35.9 Prohibition on Assignment or Transfer: Subcontractor shall not assign the Subcontract or any payments due or to become due thereunder without AVB's written consent. Any assignment without AVB's consent shall be void and assignees shall acquire no rights in the Subcontract or in any amount due or to become due. Subcontractor will not permit the beneficial interest of its subsubcontractors to be assigned, pledged or transferred without AVB's written consent. Consent to any assignment by AVB shall not relieve Subcontractor of its primary responsibility to AVB for full performance of the Subcontract, and Subcontractor shall be liable to AVB for all acts and omissions of its sub-subcontractors and assigns.

35.10 Facsimile and Counterparts: Subcontractor and AVB agree that signatures sent and received via facsimile and/or electronic mail shall be valid and binding upon the party signing this Subcontract in such manner. The parties further agree that this Subcontract may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same instrument. Each copy executed in compliance with this Section shall be deemed an executed original for all purposes.

35.11 Social Media: No photographs are to be taken by any Non-AVB personnel on any AVB project without expressed written consent from AVB. Subcontractors and all of their associated vendors, employees, delivery drivers, etc. will be held liable for all consequences resulting from non-compliance with this provision.

[SIGNATURES ON FOLLOWING PAGE]

Job No. _____
Subcontract No. _____

SECTION 36
Acknowledgment of Review of Subcontract

36.1 Subcontractor's Acknowledgment: Subcontractor represents and warrants that prior to signing this Subcontract, Subcontractor's Authorized Representatives have read, reviewed, and understand the full and complete Subcontract consisting of thirty-six (36) numbered sections and all Attachments or amendments thereto, and have read, reviewed, and understand the Contract Documents in their entirety. At its discretion, Subcontractor has had the opportunity to consult its attorney regarding this Subcontract. By signing this Subcontract, Subcontractor represents and warrants that it fully understands the complete terms and conditions of this Subcontract, the Attachments and amendments thereto and the Contract Documents, accepts them as binding, and agrees to be obligated and bound thereby.

Therefore, in consideration of the mutual promises and agreements expressed herein and intending to be legally bound, this Subcontract is hereby executed by Subcontractor and AVB.

AVB:
AVB CONSTRUCTION, LLC,
a Michigan limited liability company

SUBCONTRACTOR:
_____,
a _____

By: _____
Its: _____
Dated: _____

By: _____
Its: _____
Dated: _____

Job No. _____
Subcontract No. _____

ATTACHMENT I
TO
AVB CONSTRUCTION, LLC
STANDARD SUBCONTRACT AGREEMENT

Subcontractor's Scope of Work

- A. **Subcontractor's General Description of the Scope of Work:** Subcontractor shall perform the Work (as determined in Section 3), in strict accordance with this Subcontract, the Contract Documents, the Project Schedule and all applicable laws. The scope of the Subcontractor's Work includes, without limitation, furnishing the necessary materials, labor, supervision, inspection, testing, tools, equipment, supplies, fuel, transportation, installation, temporary facilities, clean up and all items or services of any kind whatsoever necessary to fully perform and complete Subcontractor's work.

- B. **Additional Contract Documents:** "Contract Documents" as described in Section 2.1 is to be Amended herein to also include the following project-specific documents:

AVB:
AVB CONSTRUCTION, LLC,
a Michigan limited liability company

By: _____
Its: _____
Dated: _____

SUBCONTRACTOR:

a _____

By: _____
Its: _____
Dated: _____

ADDENDUM TO ALL SUBCONTRACTS

ARTICLE 33 - PREVAILING WAGES

This Agreement includes a requirement to pay construction mechanics engaged or hired by Subcontractor (or its agents or subcontractors) at least the prevailing wages and benefits as set forth in Michigan Public Act 10 of 2023, and any implementing regulations or rules.

Subcontractor agrees to the following:

- (a) The prevailing wage schedule for construction mechanics was provided in connection with the bidding and/or other documents provided to Subcontractor before entering into this Agreement. (Attachment __.) Subcontractor acknowledges that it has had a full opportunity to review and assess the applicable prevailing wage schedule.
- (b) Subcontractor agrees that the wages and fringe benefits to be paid each class of construction mechanics engaged or hired by Subcontractor or its agents or contractors shall not be less than the wages and fringe benefit rates prevailing in the locality where the work is performed, consistent with Public Act 10 of 2023 and any proposed or final implementing rules or regulations. In case of omission of any trade or classification from the prevailing wage schedule, it shall be understood that the trade or classification omitted shall also not be paid less than the wages and fringe benefit rates prevailing in the locality where the work is performed.
- (c) Subcontractor warrants and represents that it will classify its construction mechanics based on the work performed consistent with the applicable prevailing wage schedule. Subcontractor further agrees that it will share its classifications with CM and that CM reserves the right to direct subcontract on the appropriate prevailing wage rate classification to use.
- (d) Subcontractor shall keep posted on the construction site, in a conspicuous place, a copy of the prevailing wage and fringe benefits rated prescribed by this Agreement and shall keep accurate certified records showing the name, occupation, and actual wages and benefits paid for each construction mechanic hired or engaged by it in connection with work under this Agreement. Such records shall be maintained on a weekly basis and made available for reasonable inspection by CM, Owner, or an applicable governmental agency. Subcontractor shall maintain these records for at least six years after this Agreement ends.
- (e) CM may require Subcontractor and/or its agents or contractors to provide, at CM's request, certified payroll reports, which detail the weekly hours worked and wages and benefits paid to each individual. These reports shall be in a format and include content as determined by CM.
- (f) Subcontractor agrees that it is solely responsible to ensure full compliance with all prevailing wage obligations under this Agreement and Public Act 10 of 2023 for any individuals that it engages, hires, or employs for work covered by this Agreement, whether engaged directly or through additional arrangements or subcontracts.
- (g) Subcontractor understands that CM is not self-performing any work on this project and is not a contractor under Section 2 of Public Act 10 of 2023. [If applicable].

- (h) Subcontractor agrees to indemnify, defend, and hold harmless CM, Owner and their directors, officers, employees, agents and any related entities to the fullest extent permitted by law from and against any demand, claim, action, suit, injury, damage, penalty, fine, payment, cost, expense or liability, administrative proceeding, including actual attorney fees, regardless of legal theory, for any claims or disputes related to an alleged failure to comply with prevailing wage obligations under this Agreement, Public Act 10 of 2023, or any related proposed or final legal rule, regulation, or guidance issued by the State of Michigan. Subcontractor’s duties under this provision shall be consistent with those under Article 33.

- (i) In addition to and without limitation on its other rights under this Agreement, CM may terminate Subcontractor’s right to proceed with all or part of this Agreement, if CM determines or believes that less than full prevailing rates of wages and fringe benefits have not been paid or will not be paid to construction mechanics, and CM may proceed to complete work covered by this Agreement by separate agreement with another contractor or otherwise, in which case Subcontractor and its sureties shall be liable to CM for any and all damages, expenses, liabilities, and costs, including but not limited to any excess costs occasioned by the termination and change.

- (j) Subcontractor agrees to cooperate fully with any investigation related to potential or alleged noncompliance with Act 10 of 2023 or the prevailing wage obligations under this Agreement. Subcontractor further agrees to comply with any rules, regulations or interpretations that may be adopted by the Michigan Department of Labor and Economic Growth under Public Act 10 of 2023.

- (k) Construction mechanics on this project are intended beneficiaries of the contractual prevailing wages, fringe benefits, and non-discrimination nonretaliation requirements under Public Act 10 of 2023. Any construction mechanic aggrieved by the failure of a contractor or subcontractor to pay prevailing wages or benefits as specific in this Agreement, or by a violation of Section 7 of Public Act 10 may pursue remedies specified by contract, under applicable rules, or in a court of competent jurisdiction for damages or injunctive relief and may be awarded reinstatement or other appropriate relief, such as damages, costs and fees.

Subcontractor agrees that it will include contract provisions consistent with the terms above in all of its agreements, arrangements, contracts, or subcontracts related to this Agreement.

AVB:
 AVB CONSTRUCTION, LLC,
 a Michigan limited liability company

SUBCONTRACTOR:

 By: _____
 Its: _____
 Dated: _____

 By: _____
 Its: _____
 Dated: _____

End of Section 00 51 00 Agreement Form(s)

00 73 00 Supplementary Conditions/ Requirements

- 1.1. Below are the project Supplementary Conditions for The Project.
 1. SubContractor Requirements 01 00 00.
 2. **Insurance Requirements:** Trade Contractor (including, but not limited to, all commercial project, residential project, and service contractors) must maintain and keep in full force and effect, prior to commencement, during the progress of Trade Contractor's Work, and for two years after completion of work, the insurance requirements below:
 - a. Minimum Coverage
 - a. **General Liability.** Comprehensive General Liability Insurance, including Independent Contractor's Liability, Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the Indemnification Provisions of this Contract. Liability for injury to or death of Builder's employees and third parties shall be proved and extended to include a minimum limit of \$1,000,000 per occurrence for Personal Injury and Property Damage including that of third parties. The policy shall include Broad Form Property Damage coverage extended to apply to completed operations and XCU exclusions removed. The completed operations coverage shall have an aggregate limit of no less than \$2,000,000 and must be maintained for a minimum of two (2) year after final completion and acceptance of work, with evidence of same filed with Builder. Combined General Aggregate Limit of Bodily Injury and Property Damage Liability Insurance in the amount of at least \$2,000,000, including death, as an excess of the primary coverage required above.
 - b. **Automobile Liability.** Comprehensive Automobile and Truck Liability Insurance, covering owned, hired, and non-owned vehicles with a combined single limit of \$1,000,000 for Bodily Injury and Property Damage per occurrence.
 - c. **Worker's Compensation.** Worker's Compensation as required by law; Employer's Liability insurance of not less than \$500,000 for each accident, not less than \$500,000 for each employee, and not less than a \$500,000 policy limit. Independent Contractors with no employees must also carry workers compensation as indicated. If necessary, please contact a local insurance agent to purchase the coverage from the Compensation Advisory Organization of Michigan (CAOM).
 - d. **Umbrella Liability.** Umbrella coverage of \$1,000,000 minimum coverage per occurrence must be carried.
 - e. **Additional Insured.** American Village Builders, Inc., AVB Construction, LLC, Project Owner, and any other parties identified in the contract must be designated as additional insureds under the general liability, automobile liability, and any excess liability coverage. Certificate of Liability Insurance (COI) must be followed by supporting endorsements.
 - f. **Waiver of Subrogation.** A waiver of subrogation must apply to all policies. Certificate of Liability must be followed by supporting endorsements. Certificate of Liability Insurance (COI) must be followed by supporting endorsements.
 - g. **Certificate Holder.** American Village Builders, Inc., AVB Construction, LLC, 4200 W. Centre St., Portage, MI 49024 must be named as certificate holder.

Builder does not represent that the insurance coverage specified herein, whether in scope of coverage or amounts of coverage, is adequate to protect the obligations of Trade Contractor, and Trade Contractor shall be solely responsible for any deficiencies thereof. Nothing in this Section 16, Schedule C shall be deemed to limit Trade Contractor's liability. If Trade Contractor determines for its own purposes that it requires insurance coverages in excess of the coverage specified above, nothing in this Trade Contractor Agreement shall prevent Trade Contractor, at its own expense, from purchasing insurance coverages in excess of the coverage required by this Trade Contractor Agreement. No special payments shall be made by the Builder for any insurance that Trade Contractor may be required to carry, as all are included in the contract price and the contract unit price. If Trade Contractor's Work for any Project is substantially damaged or destroyed by any insured casualty prior to completion of Trade Contractor's work, then Builder shall pay Trade Contractor's costs incurred in performing the work to the date of the casualty. However, Builder shall receive credit for all payments previously paid to Trade Contractor.

Trade Contractor, within five (5) days prior to starting its work, must furnish evidence of insurance for no less than the coverage and amounts set forth above. All insurance must be maintained in the form and with a company (or companies) satisfactory to Builder. Trade Contractor's certificate of insurance shall be filed with Builder on a form acceptable to Builder, and must require that Builder be notified in writing thirty (30) days prior to cancellation, modification or non-renewal of any insurance policy listed in Trade Contractor's certificate. **Failure to provide appropriate documentation of required insurance and supporting documents may result in forfeiture of bids and/or removal from job site.**

Supporting Documents. Trade Contractor (including, but not limited to, all commercial project, residential project, and service contractors) shall maintain updated supporting documents prior to commencement, during the progress of Trade Contractor's Work, and for two years after completion of work as outlined below:

A) Form W-9. A current Form W-9 must be on file with Builder. Blank forms can be found on the IRS website or requested from Builder using the contact information listed below.

B) Independent Contractor Statement. An Independent Contractor must have an Independent Contractor Statement on file with Builder. A blank form can be requested from Builder using the contact information listed below.

Contact Information. All forms, questions, and/or concerns can be directed to Builder's insurance department via contact information below:

- Email: insurance@avbinc.com
- Phone: 269-323-2022
- Mailing Address: AVB, Inc., 4200 W. Centre Ave, Portage, MI 49024

End of Section 00 73 00 Supplementary Conditions/ Requirements

END OF ARTICLE
AVB 00 00 00
BIDDING AND CONTRACTING REQUIREMENTS