

**THE GREAT LAKES CONSTRUCTION CO.'s
MASTER SUBCONTRACT
TERMS AND CONDITIONS
Rev. 2-13-14**

Agreement No.	TO BE CONFIRMED BY SITE-SPECIFIC SUBCONTRACT PURCHASE ORDER	Job No.:	TO BE CONFIRMED BY SITE-SPECIFIC SUBCONTRACT PURCHASE ORDER
Project Name:	TO BE CONFIRMED BY SUBCONTRACT SITE-SPECIFIC SUBCONTRACT PURCHASE ORDER (the "Project")	Address:	TO BE CONFIRMED BY SITE-SPECIFIC SUBCONTRACT PURCHASE ORDER

The Effective Date of these Master Terms and Conditions shall be _____, 201____. Contractor, The Great Lakes Construction Co. ("Contractor" or "Great Lakes"), and Subcontractor (identified in the signature line below for itself and its affiliated companies, successors and permitted assigns) agree to be bound by the following terms and conditions, which are intended to and shall supplement and amend and apply to each of Contractor's site-specific project Subcontract Purchase Order(s) ("Purchase Order" or "purchase order") issued by Contractor to Subcontractor after the Effective Date of these Master Terms and Conditions (collectively, the "Agreement"). Any provisions in any Subcontractor invoices, proposals, quotations, billing statements, acknowledgment forms or similar documents which are inconsistent with the provisions of this these Master Terms and Conditions, or the Contractor's Purchase Order, shall be of no force or effect, regardless of whether such provisions would materially alter these Master Terms and Conditions. There shall be no modification, amendment or changes to these Master Terms and Conditions unless expressly authorized and approved in writing by Contractor.

The term "Subcontractor" is used in these Master Terms and Conditions, and any site-specific Subcontract Purchase Order to which these Master Terms and Conditions apply, to include the person or entity actually performing work or services on site or off site for Contractor or supplying or furnishing or selling materials and equipment to Contractor in furtherance of that site-specific Subcontract Purchase Order.

1. ORDER AND ACCEPTANCE: If Subcontractor fails to object in writing and deliver such objection to Contractor within five (5) business days of Contractor's delivery of the site-specific Purchase Order to Subcontractor, then Subcontractor shall be deemed to have conclusively and unconditionally accepted such site-specific Subcontract Purchase Order. Following expiration of such five (5) day period, Subcontractor's acceptance shall be deemed to have occurred even if Subcontractor has not signed or returned the executed Purchase Order to Contractor. Additionally, Subcontractor's commencement of shipment, promise of shipment, or the furnishing of merchandise, materials, equipment, tools, services or work that is the subject matter of this Agreement (the "Merchandise," "Services" or "Work") shall constitute Subcontractor's agreement that it will deliver the Merchandise, Services or Work in accordance with the terms and conditions of this Agreement. Subcontractor agrees to follow the shipping and invoicing instructions issued by Contractor, which instructions are incorporated by reference into this Agreement. Shipment by Subcontractor of any part of the Merchandise or materials which are the subject of this Agreement, or performance of any of the Services or Work set forth in this Agreement, shall constitute an acceptance of this Agreement for all of the Merchandise, Services or Work ordered herein and acceptance of these terms, conditions, and instructions. The absence of a formal signature by Subcontractor in a site-specific purchase order shall not relieve Subcontractor to comply with all of the terms of this Agreement. Any request or demand for, or statement purporting to make Subcontractor's acceptance conditional on Contractor's assent to, additional or different terms shall be of no effect unless Contractor accepts the changes in writing and initials those changes. Contractor may revoke or modify this Agreement at any time prior to acceptance by Subcontractor. Contractor, in its sole discretion, reserves the right to correct any stenographic, arithmetic and clerical errors.

2. INCORPORATION BY REFERENCE: The general, special and supplemental conditions, drawings, plans, specifications, delivery and construction schedules, and safety rider, referred to herein or referred to or attached to these terms and conditions and Contractor's site-specific Subcontract Purchase Order, are specifically incorporated by reference and are made a part of this Agreement. Subcontractor agrees to supply all Merchandise and materials, and to perform all portions of the Services or Work, subject to and in strict accordance with the terms and conditions set forth in this Agreement and all such general, special and supplemental conditions, drawings, plans, specifications, and delivery and construction schedules referenced or incorporated by reference in this Agreement. It is further understood and agreed that all documents between Contractor and Contractor's customer (and the Project Owner where Contractor is not in direct contract with the project owner) also are incorporated into this Agreement by reference and are made a part of this Agreement. Subcontractor represents and agrees that it has carefully examined and understands this Agreement and all of the referenced and incorporated documents. Subcontractor acknowledges and agrees that all referenced and incorporated documents (other than provisions relating to the contract price or fee payable to Contractor) have been made available to Subcontractor and will remain available to Subcontractor at reasonable times at the branch office of Contractor that is managing the Project. This Agreement, and the provisions of the referenced and incorporated documents, are intended to supplement and complement each other and shall, where possible, be so interpreted. If, however, any provision of this Agreement conflicts with a provision of the referenced documents, or if there is a conflict within this Agreement or within any of the referenced documents, the provision imposing the higher quality, greater quantity or greater duty or obligation on Subcontractor shall govern. Subcontractor shall be bound by all interpretations of the Contract Documents made by Contractor's customer, or project owner or the project architect or engineer, to the same extent that such findings and determinations are binding on Contractor. Subcontractor further agrees to be bound by, and to assume toward Contractor, all the terms, obligations, responsibilities and conditions of the referenced and incorporated documents to the same extent that Contractor, in turn, is bound by such referenced documents to the Contractor's customer or the project owner. The referenced and incorporated documents shall collectively be referred to as the "Subcontract Documents" or "subcontract documents" or "Contract Documents."

3. PRICES: Unless otherwise specified, all prices include the cost of delivery and unloading at Contractor's facility and/or jobsite as specified in the site-specific Subcontract Purchase Order, and prices include the amounts of any and all applicable sales, use, transfer, excise or other taxes, franchise taxes, CAT taxes, transportation fees, insurance, tariffs or custom duties.

4. TERMS OF PAYMENT: Terms of payment, unless otherwise expressly agreed in writing, are as set forth on the face of Contractor's purchase order. Progress or final payments shall be due within ten (10) days of Contractor's actual receipt of payment from Contractor's customer providing all other material terms of the Agreement have been satisfied. Risk of loss with respect to nonconforming merchandise or services shall not pass to Contractor unless and until nonconformities are cured to the satisfaction of Contractor or Contractor accepts the merchandise or services in writing despite the nonconformities. All payments shall be made in United States currency. Payment shall not be to the prejudice of any claims or rights that

Contractor might have against Subcontractor on account of omissions or shortages in shipment or known or unknown defects or deficiencies in the Work, Merchandise or Services. Subcontractor shall submit, as a condition precedent to any payment, details of cost, waivers of lien, and sworn affidavits of subcontractor, prevailing wage or payroll reports, EEO reports, consent of surety to payment, and any other documentation (in form and substance satisfactory to Contractor and Contractor's customer and/or the project owner) as Contractor may request from time to time. Subcontractor understands and agrees that Contractor's receipt of payment from Contractor's customer on account of Subcontractor's Work, Merchandise and/or Services is an express and absolute condition precedent to Contractor's obligation to pay Subcontractor. Subcontractor hereby assumes the risk of default or nonpayment by Contractor's customer or the project owner for any reason whatsoever, including the risk(s) associated with creditworthiness of Contractor's customer or the project owner and the alleged breach by Contractor. Subcontractor shall not be entitled to recover interest on late or past due payments. To the extent a partial payment is based upon estimated quantities, the amount due to Subcontractor shall be determined based upon the estimates approved by the Contractor's customer but only to the extent actually paid to Contractor. Such partial payments based upon estimates are approximate only and all partial estimates and payments shall be subject to correction by Contractor in the final estimate and payment. In addition to the requirements set forth in this Agreement, final payment shall not become due to Subcontractor until the Subcontractor submits to the Contractor (1) an affidavit satisfactory to Contractor and Contractor's customer that payrolls, bills for materials and equipment, and other indebtedness of Subcontractor relating to the Project for which the Contractor or its customer might be liable have been paid or otherwise satisfied; (2) a certificate indicating that the insurance required by the Contract Documents is in force and will remain in force per Paragraph 11 of the Agreement following completion of the Subcontractor's performance; (3) releases and waivers of liens and claims of the Subcontractor and each subcontractor, materialman, and vendor of Subcontractor (and their respective-lower tiers); and (4) consent of Subcontractor's surety to release of final payment. Unless otherwise provided in the Agreement, Contractor shall have the right to withhold a 10% retainage from any payments (whether progress payments or the final payment) due to Subcontractor. The retainage shall be paid to Subcontractor within 10 days after the last to occur of the following: (a) final delivery, completion and performance of all Merchandise, Services or Work and obligations under this Agreement by Subcontractor; (b) delivery to Contractor of such sworn statements, affidavits, certificates and releases of lien as Contractor may require to evidence the full and final release of mechanic's liens and claims by Subcontractor and by all laborers, subcontractors and materialmen of Subcontractor and all lower-tiers; (c) delivery to Contractor of all manuals, drawings, warranties, guaranties and other documents required by this Agreement or the subcontract documents; and (d) Contractor's actual receipt of retainage from Contractor's customer covering Subcontractor's Merchandise, Services or Work. Notwithstanding the foregoing, the Contractor shall have the right to withhold retainage to cover any guarantee or warranty period required by the agreement between Contractor and its Contractor's customer unless a maintenance bond is provided by Subcontractor.

5. SCOPE: The Merchandise, Services or Work of Subcontractor includes, but is not limited to, such of the following as may be necessary to perform and complete the Work: all plant, materials, tools, equipment (whether for temporary or permanent use), scaffolding, supplies, transportation, cartage, loading, hoisting, forms, patterns, models, shop drawings, measurements and other facilities; all labor, work, supervision, cutting, patching, cleaning, temporary construction and other services; and all insurance, taxes, benefits, royalties, temporary utilities and other related costs except as otherwise provided in this Agreement. Subcontractor shall be responsible for all Work under the Subcontract Documents or reasonably inferable therefrom in order to provide a complete project.

6. SCHEDULE, TIME AND COORDINATION / MEETINGS: Subcontractor shall diligently and continuously prosecute and complete its Services and Work with the other work being performed on the project and premises, and shall furnish its Merchandise, in accordance with the time and scheduling requirements set forth in this Agreement and the other subcontract documents, or any revisions or modifications thereto. **TIME IS OF THE ESSENCE.** Subcontractor covenants and agrees to conform with and perform its obligations under this Agreement according to all of Contractor's published schedules and as directed by Contractor in Contractor's reasonable discretion. In order to facilitate Contractor's project planning and scheduling, and upon Contractor's request, Subcontractor promptly shall coordinate and cooperate with Contractor to provide information Contractor deems necessary to permit Contractor to develop and supplement and amend its schedule. If the progress of the project on the premises or any component thereof is delayed, obstructed, hindered or interfered with by any fault, neglect, or failure to act of Subcontractor or any of its officers, agents, employees, subcontractors, or suppliers so as to cause any additional cost, expense, liability or damage to Contractor or Contractor's customer, then Subcontractor agrees to reimburse Contractor and the Contractor's customer for, and indemnify them against, all such costs, expenses, liabilities or damages. Without limiting the generality of the foregoing, if liquidated damages are assessed against the Contractor as a result of Subcontractor's failure to timely deliver its Merchandise or coordinate and perform its Services or Work in accordance with the schedule set forth in the subcontract documents, then Contractor shall have the right to recover the amount of such damages from Subcontractor either by deducting such amount from any monies due or which may become due to the Subcontractor or by any other means available to Contractor. Subcontractor shall continuously monitor the project so as to be fully familiar with the timing, phasing and sequence of operations of the Work or Services and of other work on the project. Subcontractor shall coordinate the delivery of its Merchandise and the performance of its Services or Work with any other work in such manner as Contractor may direct to avoid conflict or interference of such work with others, shall participate in the preparation of coordination drawings and shall conform its Merchandise, Services or Work to the work and operations of Contractor and Contractor's customer and others and the subcontract documents to prevent or mitigate delays and avoid discrepancies (including unnecessary cutting or patching) with contiguous work.

Subcontractor, in person or by a duly authorized representative having power to act and acceptable to Contractor, shall attend, at its own expense, all meetings or conferences that Great Lakes may call, at the project or elsewhere, for the purpose of discussing progress of the Work, Services or Merchandise, project safety, the project schedule, or other matters bearing on the performance of Subcontractor's Work, Services or Merchandise. When possible, Subcontractor will be given at least forty-eight (48) hours' notice of such meetings.

7. SITE CONDITIONS: Subcontractor represents that it has made such investigation and inspection of the nature, location and the conditions of the project and premises (*including the character of the surface and subsurface conditions or obstacles to be encountered on, under and around the project or premises, access thereto, and storage and work areas available to Subcontractor thereon*) as are necessary to determine the difficulty and cost to Subcontractor of properly furnishing the Merchandise or Services and performing and completing the Work. Subcontractor represents that it has had full opportunity to view, sample, inspect or test the conditions on the premises prior to the execution of this Agreement, and Subcontractor is not relying upon any opinions or representations of Contractor, the Contractor's customer, or any of their respective officers, agents or employees. If conditions are encountered at the premises which are subsurface or otherwise concealed physical conditions which were actually or allegedly unknown to Subcontractor and which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities, then Subcontractor shall give Contractor written notice promptly and in all instances before conditions are disturbed and in no event later than twenty-four (24) hours after first observance of the conditions or such other period as Contractor may be obligated to notify Contractor's customer under the subcontract documents. Subcontractor shall not be entitled to any additional compensation or damages by reason of any differing or changed or unforeseen or undisclosed conditions unless and to the extent that Contractor's customer actually is liable for and actually pays the same to Contractor, nor shall Subcontractor be entitled to an extension of the time for performance of the Work and furnishing of the Merchandise or Services unless and only to the extent that Contractor's customer actually grants such extension of time to Contractor. Contractor, upon receipt of any payment from Contractor's customer to Contractor based upon any such claim made on behalf of Subcontractor, will pay the same to Subcontractor, less Contractor's expenses in pursuing payment from Contractor's customer. Except to the extent expressly provided in this Agreement, Subcontractor waives the right to make any claims against Contractor or to recover any damages from Contractor based upon conditions encountered.

8. PERMITS, LICENSES, AND COMPLIANCE WITH LAWS: Subcontractor shall secure, pay for and keep in effect all licenses, permits and inspection certificates necessary for the proper execution and completion of the Work and shall deliver all certificates of inspection and

other certificates and permits to Contractor. Subcontractor shall comply with all laws, ordinances, rules and regulations of governmental entities having jurisdiction, including but not limited to those relating to wage and hour compliance, safety, health, discrimination in employment, fair employment practices or equal employment opportunity, and with building codes and the other requirements of the governing authorities applicable to this Agreement. In accepting this Agreement, Subcontractor shall be deemed to represent that the Work, Merchandise or Services was or will be produced or performed or furnished in strict compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. Unless otherwise agreed in writing, Subcontractor shall insert a certificate on all invoices submitted in connection with this Agreement stating that the Merchandise or Work or Service covered by the invoice was produced in compliance with applicable requirements of the Fair Labor Standards Act, as amended, and all regulations and orders of the U.S. Department of Labor. Subcontractor further represents that the Merchandise or Services to be furnished and/or Work performed hereunder was or will be produced or performed in compliance with Executive Order 11246 and regulations issued thereunder, and any other standards, rules and regulations that apply to the project of Contractor's customer, including the project owner, and further including those that are incorporated by reference into this Agreement. Subcontractor shall develop and maintain a certified or approved drug free workplace program, including compliance with Executive Order 2002-13T, and fully comply with the requirements of Executive Order 2002-13T and all related regulations. Prior to commencement of the Work or Services set forth in this Agreement, Subcontractor shall provide Contractor with written verification of the implementation of an approved drug free workplace program, and compliance with Executive Order 2002-13T.

In addition to the foregoing and the other terms and requirements of this Agreement, it is understood and agreed that the attached **Subcontract Addendum** is incorporated by reference and shall apply to any Subcontract site-specific Purchase Order or project involving expenditures of federal funds, including without limitation federal aid highway contracts.

9. TAXES AND FEES AND COSTS: Subcontractor shall file all tax returns and reports with, and pay when due all taxes and contributions owing to each governmental entity or subdivision applicable to the Merchandise, Services or Work or to the wages of its employees in connection with this Agreement, including, but not limited to, all contributions, taxes or premiums (including interest and penalties thereon) which may be payable under the unemployment insurance law of any state, the federal Social Security Act, federal, state, county and/or municipal tax withholding laws, or any other law, measured upon the payroll of or required to be withheld from employees engaged in the Work or services or the furnishing of Merchandise; all sales, use, personal property and other taxes (including interest and penalties thereon) required by any federal, state, county, municipal or other law to be paid or collected by Subcontractor or any other person or persons acting for, through or under Subcontractor by reason of the performance of the Work or the furnishing of the Merchandise or Services; and all pension, welfare, vacation, annuity and other union benefit contributions payable under or in connection with labor agreements with respect to all persons engaged in the Work.

10. WORKER'S COMPENSATION: Subcontractor, at its expense, shall fully comply and cause its lower tiers to comply with the worker's compensation laws for each state in which the Work or Services is performed, and with the safety and other regulations of all governmental authorities. Before commencing the Work or Services or furnishing the Merchandise, Subcontractor shall deliver to Contractor certificates evidencing full compliance all governmental requirements. Further, Subcontractor, at its expense, shall procure and maintain in full force and effect for the duration of the Work, to the extent available, Worker's Compensation insurance providing coverage for statutory benefits and Employer's Liability Coverage of at least \$1,000,000 per occurrence / accident / employee. The policy shall contain an All States endorsement. The policy shall be endorsed to provide a waiver of subrogation in favor of Contractor. Prior to the commencement of the work, Subcontractor shall furnish Contractor certificates evidencing that this insurance is in effect with the coverages and minimum limits specified above and with insurance companies acceptable to Contractor. At the request of Contractor, Subcontractor shall provide and maintain current certificates in Contractor's files.

11. INSURANCE: Subcontractor, at its expense, shall obtain prior to the commencement of the Work or the furnishing of the Merchandise or Services and maintain in effect (and furnish Contractor certificates in triplicate or, if requested by Contractor, copies of the policies evidencing that it has in effect), the following minimum insurance coverages and minimum limits with insurance carriers acceptable to Contractor that are licensed to transact business in the locale of the project and where any other Work or Services are being performed:

- A. Commercial General Liability - This insurance shall be written on an occurrence basis with limits not less than \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate. The policy shall include coverage for Premises/Operations, Independent Contractors, Contractual Liability (sufficient to cover the liability assumed by the Subcontractor under the Agreement), Property Damage arising out of the "XCU" hazards, Completed Operations, Products Liability, Broad Form Property Damage, and Personal Injury. The Completed Operations coverage shall be maintained for at least three (3) years after the final completion of the Project of which the Work and the Merchandise or Services are a part. If the policy contains a general aggregate limitation, then the policy shall be endorsed to provide a \$1,000,000.00 specific aggregate for the Work under this Agreement. The coverages shall be written on ISO forms GC 2010 04/13 and GC 2037 04/13 or comparable coverage forms, and endorsed to provide additional coverages and limits of insurance as required by this Agreement.
- B. Business Automobile Liability - The policy shall contain limits of not less than \$1,000,000.00 Combined Single Limit and include coverage for all Owned, Hired and Non-owned automobiles.
- C. Excess/Umbrella Liability - The policy(ies) shall be written with limits of not less than \$1,000,000.00 Combined Single Limit and shall be endorsed in the same form and manner as the Commercial General Liability, Business Automobile Liability, and Employer's Liability coverages.
- D. Professional Liability - If Subcontractor is performing any type of design or other professional services, then professional liability (errors and omissions) coverage with coverage limits of not less than \$2,000,000 for each occurrence and a \$2,000,000 annual aggregate. If the professional liability (errors and omissions) insurance is written on a claims made basis, then such insurance shall have a retroactive date no later than the date of the Agreement and shall include a supplemental extended reporting period provision. Subcontractor shall require each of its subcontractors and consultants providing engineering or architectural services to maintain separate errors and omissions (professional liability) insurance coverages to protect against claims or damages arising out of the performance of their respective services in furtherance of the Agreement.

The Contractor and Contractor's Customer (and the project owner if other than Contractor's customer) shall be named as an additional insured to Subcontractor's liability insurance policies (other than professional liability coverages) for liabilities or claims arising out of the Merchandise, Services or Work, and such insurance shall be endorsed so as to make it primary to any liability insurance carried by the Contractor. No policy of insurance naming Contractor as an additional insured shall contain any exclusion or prohibition against first-party claims or claims by any party named as an additional insured. In lieu of naming Contractor as an additional insured as required herein, Subcontractor, at its sole cost and expense, may purchase an

Owner's & Contractor's Protective Liability Policy on behalf of Contractor, all in form and substance acceptable to Contractor. Certificates of Insurance, and copies of policies, if requested, acceptable to the Contractor shall be delivered to the Contractor prior to commencement of the Work. No coverage shall be canceled or allowed to expire or materially changed until at least thirty days (30) prior written notice has been given to the Contractor.

The foregoing insurance coverages are required to remain in force for a period of three (3) years after final payment by Contractor to Subcontractor, and an additional certificate evidencing continuation of such coverage shall be submitted to the Contractor prior to final payment. Subcontractor waives all rights against the Contractors' and Contractors' agents and employees, and customer, for damages caused by fire or other perils to the extent covered by insurance applicable to the project, Merchandise, Services or Work, except such rights as it may have to the proceeds of any property insurance. Subcontractor shall require similar subrogation waivers from its lower tiers in favor of Contractor and Contractors' agents and employees and customer.

12. NO ASSIGNMENT: Absent Contractor's written consent, Subcontractor may not assign any rights or delegate any duties or responsibilities that Subcontractor may have under this Agreement, in whole or in part without Contractor's express written consent. Any assignment or delegation in violation of the foregoing is void and not binding on Contractor. No such assignment or delegation shall bar Contractor from asserting against Subcontractor, or the transferee or assignee, or both, any claim or right that Contractor may have against Subcontractor, including any right of recoupment or set-off.

13. UNAVOIDABLE CANCELLATION: Contractor reserves the right in its sole discretion to cancel this Agreement including, without limitation, any project site-specific Subcontract Purchase Order, in whole or in part in the event of lockout, strike, unavoidable accident, riot, war, act of God, fire, flood, earthquake, or any other casualty whatsoever affecting Contractor or the project or Contractor's customer. Such cancellation shall be without penalty to Contractor and subject to Paragraph 15. In no event shall contractor be liable for any incidental, consequential, or special damages or for lost overhead and profit claims for premature cancellation.

14. CANCELLATION OR SUPPLEMENTATION FOR CAUSE: This Agreement is not subject to cancellation or modification by Subcontractor, in whole or in part, except with Contractor's express and prior written consent. Contractor may, in its discretion, terminate and rescind all or part of this Agreement including, without limitation, any project site-specific Subcontract Purchase Order, following three (3) days prior written notice and opportunity to cure to Subcontractor, in the event Subcontractor (i) breaches or otherwise fails to perform any of its obligations under this Agreement or the subcontract documents or Contract Documents, or (ii) otherwise defaults under this Agreement, or (iii) in the event Subcontractor becomes insolvent or proceedings are instituted by or against Subcontractor under any provisions of any federal or state bankruptcy or insolvency laws, or (iv) in the event Subcontractor ceases its operations, or (v) in the event Contractor requests adequate assurance of due performance and Subcontractor fails to provide such assurance in writing within three (3) days after the date of Contractor's request therefor, or (vi) in the event that Subcontractor fails to adequately staff and man the project and perform the work with reasonable diligence and promptness using sufficiently skilled employees and supervision to maintain satisfactory progress. Time is of the essence to this Agreement, and Subcontractor's failure to meet, or apparent inability to meet, any delivery date, milestone dates, or completion dates shall constitute a material breach of this Agreement justifying Contractor's cancellation. Additionally, without cancelling the Agreement, or any project site-specific Subcontract Purchase Order, Contractor may supplement Subcontractor's performance at Subcontractor's expense with Contractor's own forces or through the labor force of a third party. In event of Contractor's cancellation or supplementation Subcontractor shall not be entitled to payment for Merchandise, Services or Work furnished under this Agreement after the cancellation or supplementation date. Contractor shall have the right to deduct the cost of remedying the default, supplementing Subcontractor's forces, and completing the Subcontractor's performance under this Agreement with either Contractor's own forces or through the services of third parties. Contractor shall be entitled to deduct the cost of completion or completion or cure for sums otherwise due or to become due Subcontractor. Subcontractor shall be obligated to reimburse Contractor upon demand for any expenses or costs or damages of supplementation or cure or completion, plus 25% mark-up for Contractor's administrative costs and expenses, and shall promptly pay and reimburse Contractor all costs and damages that exceed sums due Subcontractor under the Agreement, plus 25% for Contractor's administrative costs and expenses. In the event that a termination or cancellation under this paragraph is determined to be unjustified or wrongful, then the termination or cancellation shall be treated as a "convenience termination" under paragraph 15, and Subcontractor's remedies and damages are limited as provided for in paragraph 15. Subcontractor also shall be responsible for all administrative costs and expenses of Contractor, together with legal fees and other costs of enforcement of the Agreement or cure.

15. CONVENIENCE CANCELLATION / SUSPENSION: Contractor shall have the option at any time, without cause, (whether or not Subcontractor is in default) upon written notice to Subcontractor, to cancel or terminate this Agreement including, without limitation, any project site-specific Subcontract Purchase Order, in whole or in part, or to delay or suspend the delivery or completion of all or part of the Merchandise, Services or Work. Such termination, suspension or delay shall be without cost to Contractor. Subcontractor only shall have the right to compensation (a) in the case of termination, for its actual costs of Merchandise, Services or Work furnished by Subcontractor in connection with this Agreement prior to such termination together with overhead and profit on such completed Work or Services or furnished and unreturned Merchandise; provided, however, that in no event shall such amount, together with all previous payments made to Subcontractor, exceed the price(s) set forth in this Agreement and the amount actually received by Contractor from Contractor's customer for the Subcontractor's Work, Services or Merchandise; or (b) in the case of delay or suspension, for reasonable handling and storage charges or overhead damages and other indirect expenses actually paid to Contractor by Contractor's customer. Under no circumstances shall Subcontractor be entitled to anticipated profits or lost profits or overhead for Merchandise, Services or Work that remain to be furnished or performed; it being understood and agreed that any and all such profit and overhead claims and damages are hereby waived and released. Subcontractor also shall not be entitled to storage charges or other consequential, incidental or special damages or termination costs or expenses. Contractor's obligation to pay Subcontractor is expressly conditioned on Contractor's receipt of actual payment from Contractor's customer on account thereof. Any and all other terms and conditions to payment set forth in this Agreement including, without limitation, paragraph 4, shall apply to payments or sums claimed due Subcontractor under this paragraph 15.

16. SUBCONTRACTOR'S REPRESENTATIONS AND WARRANTIES: Subcontractor represents and warrants to Contractor, in addition to all warranties implied by law, that each item of Merchandise, Services or Work described on the face hereof, together with all related packaging and labeling and furnished by Subcontractor, shall (a) be free from defects in design, workmanship and materials including, without limitation, such defects as could create a hazard to life or property or defect in Subcontractor's or Contractor's work; (b) conform in all respects with all applicable federal, state and local laws, orders and regulations, including, but not limited to, those regarding occupational safety and health and wage and hour laws; (c) not infringe or encroach upon Contractor's or any third party's personal, contractual or proprietary rights, including patents, trademarks, copyrights, rights of privacy or trade secrets; and (d) conform to all of Contractor's specifications and the subcontract documents, and to all articles shown to Contractor as samples of Subcontractor's Merchandise or Services. All warranties set forth in this paragraph, or in any other part of this Agreement (including warranties incorporated herein by reference), or which law implies, shall survive any inspection, acceptance or payment by Contractor. Such warranties shall be in addition to Contractor's other rights and remedies, and shall not be construed as a limitation on Contractor's claims or rights, including the right to enforce the Agreement against Subcontractor for the applicable statutes of limitation for breach of a written contract. Subject to the foregoing, Subcontractor warrants all goods and services for a period of no less than two (2) years from the date of delivery or completion of Subcontractor's performance under the Agreement or substantial completion of the project that is the subject of this Agreement, whichever is later. In the event of a warranty claim, Subcontractor shall promptly remove and replace any defective or nonconforming Merchandise or Work or Services at Subcontractor's sole cost and expense. Subcontractor also shall be responsible for the cost of correcting the materials, services and work and property of Contractor, Contractor's customer, or others damaged by

Subcontractor's defective or non-conforming Merchandise or Services or Work, including goods and work of Contractor and others that are damaged by Subcontractor in connection with Subcontractor's performance of warranty work. Subcontractor also shall be responsible for all administrative costs and expenses of Contractor, together with legal fees and other costs of warranty enforcement or cure.

17. MERCHANTABILITY: Subcontractor represents and warrants to Contractor that all Merchandise or Services delivered or Work performed pursuant to this Agreement will be merchantable at the time of delivery to Contractor or performance and at the time of use by Contractor's customer, and that each will be fit and safe for sale and use by Contractor or its customers for which such items are ordinarily intended and for any particular intended use of which Subcontractor or its agents have actual or constructive knowledge.

18. INDEMNIFICATION: To the fullest extent permitted by law, Subcontractor shall reimburse, indemnify, hold harmless, and defend Contractor, Contractor's surety, Contractor's customer, the Project, (and the Project owner if other than Contractor's customer) (and each of their respective officers, employees, partners, agents and representatives) from and against any claim, lien, mechanics' lien, attested account, cause of action, lawsuit, demand, fine, penalty, assessment, loss, expense or damage of whatever kind or description (including legal fees and related costs and expenses), including any special, incidental and consequential damages arising from or relating to Subcontractor's performance under this Agreement, Subcontractor's negligence or other wrongful acts, or Subcontractor's breach of this Agreement, or Subcontractor's default. The scope of this indemnity agreement includes, without limitation, any and all claims, damages, demands, assessments, or lawsuits for personal injury, death or property damage, which may result from Subcontractor's negligence or other wrongful acts or Subcontractor's breach of this Agreement or its representations and warranty obligations under this Agreement or which may result from any products liability claims relating to the Merchandise or Services. The scope of this indemnity agreement applies to the acts or omissions of Subcontractor, its agents, employees, subcontractors, vendors, materialmen, and lower-tiers, or anyone for whom Subcontractor is legally responsible. Subcontractor, at Subcontractor's sole expense, shall promptly dispose of all such claims and liens, defend all lawsuits filed against Contractor or Contractor's customer or the Project owner on the account thereof, pay all judgments rendered against Contractor in such lawsuits (including any prejudgment interest assessed against any indemnitee hereunder), and reimburse Contractor, Contractor's surety, and/ or Contractor's customer in cash upon demand for all reasonable expenses incurred by Contractor, Contractor's surety, and/or Contractor's customer on the account thereof including, but not limited to, attorney fees, expert witness fees and court costs. Subcontractor's obligation to indemnify Contractor under this provision shall not apply to any losses to the extent initiated or proximately caused by or resulting from the sole or concurrent negligence or willful misconduct of any of the parties indemnified hereunder. However, Subcontractor shall remain obligated to defend Contractor, Contractor's surety, and Contractor's Customer at Subcontractor's expense until such time that it is conclusively determined that the cost or damage or expense or claim is not the fault of Subcontractor or others from whom Subcontractor is legally responsible. Notwithstanding anything to the contrary contained herein, Contractor at its option shall have the right to participate in the defense of any claims asserted against it, approve the selection of counsel and approve the terms of any settlements made in its name or on its behalf. The scope of Subcontractor's duty to defend and indemnify Contractor under this paragraph shall not be limited in any manner whatsoever by any immunity or limitations of liability afforded to Subcontractor under the workers' compensation laws, constitutions, or any other employee benefit acts. For purposes of this indemnity, Subcontractor specifically waives any immunity afforded it by Ohio Constitution Article 2, Section 35 and Ohio Revised Code Section 4123.74, et seq.

19. LIEN WAIVER AND BONDING LIENS / ADDITIONAL INDEMNITY: For good and valuable consideration, including the negotiated price for the Merchandise, Services or Work under this Agreement, Subcontractor unconditionally waives and releases any and all mechanics' lien rights or claims of lien rights against the premises or Project or attested account rights and claims against any public project fund. Subcontractor agrees not to file, or to permit its lower-tier subcontractors, vendors, laborers, unions, or materialmen (including lower-tiers), to file any mechanics' liens or attested accounts to secure payment for Merchandise, Services or Work furnished or performed in furtherance of this Agreement. Subcontractor further agrees that any such lien or attested account shall be void and unenforceable and shall constitute a substantial and material breach of this Agreement. Contractor shall be entitled to set-off against any sums due or to become due Subcontractor under this Agreement an amount equal to two times the amount of the lien or attested account or other claim of Subcontractor or any of Subcontractor's subcontractors, suppliers, vendors, materialmen, laborers, unions and lower-tiers. Contractor shall be entitled to recover from Subcontractor the attorneys' fees, bond premiums, and expenses that Contractor incurs to defend and/or discharge any such mechanics' lien or attested account claim of Subcontractor, or Subcontractor's subcontractors, vendors, suppliers, materialmen, unions, laborers, or lower-tiers. Subcontractor further agrees to indemnify, defend and hold Contractor, Contractor's customer, the Project, the premises, and the Project owners (and their respective officers, employees, partners, agents and representatives) harmless from and against any and all liens, claims, damages, demands and causes of action by any subcontractors, suppliers, vendors, laborers, unions, and other persons or entities working directly or indirectly for Subcontractor (including lower-tier subcontractors, suppliers, and vendors) arising from or relating in any way to any Work or Services or Merchandise or materials furnished in furtherance of this Agreement. Within three (3) days of receipt of written notice from Contractor, Subcontractor shall cause to be discharged and released any lien or claim or attested account of Subcontractor or any of Subcontractor's subcontractors, suppliers, vendors, laborers, unions, and other persons or entities working directly or indirectly for Subcontractor (including lower-tier subcontractors, suppliers, and vendors). In the event of a lien or attested account by a subcontractor, supplier, material man, vendor, laborer, union or other lower-tier of Subcontractor, Subcontractor shall immediately upon demand by Contractor post a surety bond or other alternate security to discharge the lien or attested account from the project and/or property, in accordance with Chapter 1311.01 *et seq.* of the Ohio Revised Code. If Subcontractor fails to honor its obligations under this paragraph, then Contractor may, at Contractor's sole option (and without incurring direct liability to any third-party to this Agreement), pay the claim directly and deduct the amount of Contractor's direct payment from the sums due Subcontractor under this Agreement. The provisions in this paragraph shall be in addition to Contractor's other rights, and Subcontractor's other obligations, in this Agreement.

20. SHOP DRAWINGS / SUBMITTALS: Subcontractor shall, at its own expense, prepare and submit to Contractor such shop drawings, samples, models and other submittals for the Merchandise, Services or Work as may be requested by Contractor. Such shop drawings, samples, models and other submittals (collectively "submittals") shall be approved in writing by such persons as Contractor may designate before Subcontractor proceeds under this Agreement. No approval of any submittals, nor the making of any payment to Subcontractor, shall constitute an acceptance of any Merchandise, Services or Work or impair Contractor's right of inspection or rejection or any other rights or remedies to which Contractor may be entitled, or relieve Subcontractor from any of its obligations or warranties.

21. OWNERSHIP OF DOCUMENTS: All plans, drawings, reports, manuals, specifications, test data or other documents or information prepared by Subcontractor pursuant to this Agreement, and all submittals of Subcontractor, shall be furnished to Contractor and shall be the property of Contractor, and Contractor shall have the unlimited right to publish, transfer, sell, license, and use all or any part of such documents or information without additional payment to Subcontractor. Subcontractor further grants a royalty-free license to Contractor for Contractor's use of such submittals in Contractor's discretion.

22. DEDUCTIONS AND SET-OFF / AUDITS: Any sums due and/or payable to Subcontractor shall be subject to all claims and defenses of Contractor or any of Contractor's affiliated companies, whether arising from this or any other transaction or occurrence or project, and Contractor may set-off and deduct against any such sums all present and future indebtedness of Subcontractor or any of its affiliated companies to Contractor or any of its affiliated companies.

Subcontractor shall keep full and detailed records and accounts related to the cost of the Merchandise or Work or Services under this Agreement and exercise such controls as may be necessary for proper financial management under this Agreement and to substantiate all costs

incurred. Contractor and its designated representatives shall, following reasonable notice, be afforded complete access to and shall be permitted to audit any and all such project financial and accounting information and documentation, including the right to copy what Contractor, in its reasonable and sole discretion, may request or require of Subcontractor, including accounting entries, invoices, vendor documents, receipts, labor and payroll records, proposals, estimates, budgets, purchase orders, correspondence, electronic files and data, and other related documents and information.

23. DEFECTIVE WORK, MERCHANDISE OR SERVICES: Regardless of any prior payment by Contractor, Contractor reserves the right to return, at any time, for full credit at Subcontractor's expense (including but not limited to cost of packing and transportation to and from source) and risk, all or any part of the Merchandise, Services or Work furnished by Subcontractor which is defective or non-conforming in material or workmanship or which differs in any way from any drawings, specifications and warranties contained in the Agreement or subcontract documents or implied by law or that otherwise does not conform to the requirements of this Agreement, and Subcontractor shall have no right thereafter to cure such defects or failure to conform to such specifications and warranties or the subcontract documents. Contractor reserves the right, but shall not be obligated, to repair any defects and debit from the Subcontractor any expenses involved plus a 25% administrative expense when in Contractor's sole judgment the cost of making such repairs would be less than the cost of replacement by Subcontractor or cancellation of this Agreement or would be less disruptive to the project or operations of Contractor or Contractor's customer. Contractor also reserves the right, but shall not be obligated, to require Subcontractor to repair or replace, at Contractor's option, defective or non-conforming Merchandise, Services or Work, at Subcontractor's expense. If Contractor returns defective Merchandise, Services or Work rejects non-conforming Work under this paragraph, Contractor may additionally cancel any remaining portion of this Agreement.

24. INSPECTION: Contractor may inspect and test the Merchandise, Services or Work during manufacture, construction, or preparation and shall have the right to inspect the Merchandise, Services or Work at the time of delivery and/or completion. Multiple inspections shall not be grounds for objection by Subcontractor. No previous inspections by Contractor shall relieve Subcontractor of any liability under this Agreement. If defects or nonconformities for which Subcontractor is responsible under the terms of this Agreement are revealed by subsequent inspection, analysis, manufacturing operations, use or otherwise, Contractor may reject or revoke its acceptance of the Merchandise, Services or Work, in whole or in part, at any time after such defects or nonconformities are discovered, demand Subcontractor cure or replace the Work, Services or Merchandise, or Contractor may pursue its other rights or remedies under this Agreement as Contractor, in its discretion, shall determine are in its best interest and those of its customer and/or the project owner.

25. PASSAGE OF TITLE: Until Contractor has inspected the Merchandise, Services, or Work furnished under this Agreement and has accepted it as being in conformity with this Agreement, Subcontractor's delivery obligation shall not be deemed complete, nor shall title pass to Contractor. Subcontractor represents and warrants to Contractor that Subcontractor shall have good title to the Merchandise, Services or Work, free and clear of all liens at the time of Subcontractor's delivery or furnishing of the Merchandise, Services or Work.

26. CHANGES: Contractor shall have the right to make changes in this Agreement, but no claim for payment of additional compensation or additional time shall be recognized or valid, unless authorized in writing and in advance by Contractor. If Subcontractor maintains or claims that such changes affect the time of performance or the price of the Work, Merchandise or Services, then Subcontractor shall notify Contractor in writing immediately but in no event later than twenty-four (24) hours after Subcontractor had knowledge of the change or such other shorter period as may exist under the subcontract documents for Contractor to give notice to Contractor's customer. There shall be no adjustment to the time of delivery or price to be paid for Merchandise, Services or Work unless and until Contractor signs a change order authorizing such adjustment. Subcontractor shall be deemed to have conclusively waived and any all rights to payment of additional compensation or adjustment of the time for performance if Subcontractor fails to strictly comply with the provisions of this paragraph relating to notice and authorizations for additional compensation. All risk of loss shall remain with Subcontractor. The Subcontractor understands that Contractor will issue change orders a form substantially similar to the form attached to this Agreement.

27. CONTRACT AND JURISDICTION: This Agreement and the effect of any contract formed pursuant hereto shall be construed and enforced in accordance with the laws of the State of Ohio.

28. NON-WAIVER: The failure of the Contractor to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions or of the right of Contractor to enforce each and every such provision at any time.

29. MISCELLANEOUS: (a) All rights granted to Contractor hereunder shall be in addition to, and not in lieu of, Contractor's rights arising by operation of law; (b) any provisions of this Agreement which are typewritten or handwritten by Contractor shall supersede any contrary or inconsistent printed provisions; (c) no modification of the terms of this Agreement shall be valid unless in writing and signed by Contractor; (d) should any of the provisions of this Agreement be declared by a court of competent jurisdiction or any arbitrator to be invalid, such decision shall not affect the validity of any remaining provisions; (e) all of the terms herein shall apply to additional quantities of Merchandise, Services or Work ordered by Contractor except to the extent covered by a new site-specific Subcontract Purchase Order; (f) this Agreement, together with any information or documents incorporated herein by reference, shall be deemed to contain the entire Agreement between Contractor and Subcontractor and to constitute the complete and exclusive expression of the terms of the parties understanding and business dealings. All prior or contemporaneous written or oral agreements or negotiations with respect to the subject matter hereof being merged herein.

30. CLAIMS: Subcontractor agrees that it shall not be entitled to recover any damages or additional costs from Contractor on account of claims for additional compensation, changes, delays, hindrances, interferences, lost productivity, or other impact damages of whatever kind or description unless and until Contractor recovers and collects such damages and costs from Contractor's customer or any other responsible party, including any other lower tier of Contractor. Such recovery and collection by Contractor from the Contractor's customer or the other responsible party is an absolute condition precedent to Subcontractor's right of recover additional compensation from Contractor. Contractor shall act as a conduit for Subcontractor's claims and alleged damages and costs, and Subcontractor shall be obligated to compensate Contractor for all costs and expenses, including legal and consulting fees and administrative expenses, that Contractor incurs to present Subcontractor's claims to the Contractor's customer for consideration of payment or to arbitrate, mediate, or litigate such claims. Subcontractor shall furnish all required testimony and documentation to support its claims. Contractor assumes no fiduciary responsibility for prosecution and recovery on Subcontractor's behalf. In the event that Contractor recovers and collects damages from Contractor's customer or another responsible party (including another subcontractor of Contractor) on account of Subcontractor's claims through negotiation, litigation, mediation, or arbitration, then Contractor shall tender to Subcontractor the amount actually recovered and collected by Contractor less the cost of Contractor's prosecution and administrative expenses and expert witness and consulting fees, and Subcontractor shall accept that amount as payment in full for its claims and damages and additional costs and does hereby unconditionally release Contractor from and against any additional liability or damages on the Subcontractor's demands and claims. If the claim or demand is denied for any reason by the Contractor's customer or other responsible party or by any fact finder (including a judge or arbitrator), or the amount claimed or demanded or is not collected for any reason whatsoever, the Subcontractor shall release Contractor from any and all liability for the claims and damages. Any and all other conditions precedent to payment set forth in this Agreement, including paragraph 4, shall apply equally to payments and amounts Subcontractor claims due under this paragraph 30.

31. DISPUTES: At the sole option of Contractor, any and all claims, disputes, controversies, demands, and causes of action of whatever nature, kind or description arising from or relating to this Agreement, including without limitation contract, equity, tort or legal claims, and further including without limitation claims relating to rights of payment or interpretations of this Agreement or breach thereof, shall be submitted to mandatory and

binding arbitration before the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The decision and Award of the Arbitrator(s) shall be final and binding on Contractor and Subcontractor, and the decision and Award may be reduced to judgment and enforced in any court of competent jurisdiction. This agreement to arbitrate shall be specifically enforceable under the Ohio Arbitration Act and the Federal Arbitration Act. The arbitrator(s) shall decide any issues relating to waiver of rights or timeliness of claims. Unless Contractor agrees otherwise, all arbitration proceedings shall be conducted in Cleveland, Ohio. Contractor shall have the right, at its option, to join its consultants, contractors, subcontractors, suppliers, vendors or other third parties supplying services or materials in furtherance of the project, with whom Contractor has an agreement to arbitrate, as a party to any arbitration commenced pursuant to paragraph 31 of this Agreement. Contractor also shall have the right, at its option, to join Subcontractor in any arbitration or other proceeding between or among the Contractor and the Contractor's customer, or the project owner, or any other third party.

32. PRECEDING WORK. Subcontractor, before beginning performance, shall carefully examine the work of others which may affect its Merchandise, Services or Work, determine whether it is in a fit, ready and suitable condition for the proper and accurate performance of the Work and furnishing of the Merchandise or Services, use all means necessary to discover defects in such other work, and notify Contractor in writing of any claimed deficiencies which may affect the work or merchandise or services. If such notice is not so given, all such work shall be deemed acceptable to Subcontractor. In case of a dispute as to whether such other work is deficient, Subcontractor nevertheless shall proceed immediately with the Work or services or furnishing or Merchandise when notified by Contractor in writing to proceed.

33. CLEAN-UP AND PROTECTION OF WORK. Subcontractor at all times shall keep the project and premises free from rubbish, debris and obstructions caused by its operations (including surplus materials, crates and packing, etc., brought to the premises by Subcontractor or by others for the benefit of Subcontractor). At the time of completion of the work and furnishing of the merchandise or services in each area, Subcontractor shall leave the area "broom clean" and shall remove all of its tools, equipment, scaffolding and surplus materials. Subcontractor shall not damage the work of others by its operations, and shall repair or pay the cost of repairing any such damage done by Subcontractor or Subcontractor's employees, agents, representatives and lower-tiers.

34. DAMAGE OR DESTRUCTION. Subcontractor shall cover and at all times adequately protect the Merchandise, Services or Work from damage until final acceptance by Contractor and Contractor's customer, and shall properly store and protect its own materials furnished to it by others. Subcontractor shall be responsible for any damage to or destruction of the Merchandise, Services or Work, and any other equipment, tools and personal property at the premises, whether owned, rented or used by Subcontractor or anyone performing any of the work. Subcontractor at its expense shall, as directed by Contractor, replace, repair or restore any Merchandise, Services or Work thereof which are damaged or destroyed, whether such destruction or damage results from acts of God, fire, public enemy, civil commotion, vandalism, acts of omission or commission by any person, firm or corporation. Risk of loss with respect to the Merchandise, Services or Work shall remain with Subcontractor until final acceptance of the completed work and the Merchandise, Services or Work. Until such final acceptance, any damage or destruction of the Merchandise, Services or Work, however caused, shall be made good by Subcontractor at no extra charge or cost to Contractor. Such rework at Subcontractor's expense shall not preclude Subcontractor from making a claim under any insurance maintained for the benefit of Subcontractor, but the right to make or the pendency of such claim shall not give cause to Subcontractor to delay the commencement or completion of such rework.

35. SAFETY / ACCIDENT REPORTS. Subcontractor shall require its employees at the premises to wear and use safety and health equipment, to work in harmony with others working at the premises, and to comply with the Contractor's customer 's or Contractor 's regulations, and the rules and regulations imposed by law, covering working conditions. Contractor shall have the right to furnish any safety or health equipment which Subcontractor fails to provide promptly, and Subcontractor shall upon demand pay Contractor's cost thereof plus 25% for Contractor's administrative expense and overhead and other indirect costs. Subcontractor shall indemnify Contractor for fines, penalties and corrective measures, and damages, and shall reimburse Contractor for costs and expenses, including attorney fees, that result from acts of commission or omission by Subcontractor or its lower tier subcontractors or vendors or their assigns or their respective employees and agents in failing to complying with such safety rules and regulations. Subcontractor, immediately after the occurrence of each accident or other event involving injury to or death of any person or damage to any property on the project or in any way relating to the Work, merchandise or services, shall deliver to Contractor a report thereof, which may be a copy of any accident report delivered to its insurance carrier. Contractor's standard safety policy and requirements are incorporated into this Agreement.

Subcontractor's project supervisor and safety director will be required to attend a pre-job safety meeting which will be held prior to the subcontractor's mobilization. Subcontractor acknowledges and agrees that one of the reasons for its selection is its special knowledge of the risks and risk prevention measures in its field of expertise. Subcontractor is primarily responsible for ensuring safety in its day-to-day project operations. While subcontractor shall abide by the provisions of the site safety plan developed by Contractor and/or Contractor's customer (or the project owner), Subcontractor shall be solely responsible for preparing and enforcing its own trade and project specific site safety plan. Subcontractor shall require its employees and all of its permitted site visitors and its lower tier vendors and subtrades at the site to wear and use all required safety and health equipment, to work in harmony with others at the project, and to comply with all project safety requirements as detailed in the subcontract documents. Subcontractor shall indemnify Contractor and Contractor's customer (and the owner) for fines, penalties and corrective measures, and damages, and shall reimburse each of them for costs and expenses, including, but not limited to, attorney fees incurred by any one or more of them that result from acts of commission or omission by Subcontractor or its lower tiers or their assigns or their respective employees and agents in failing to comply with federal, state or local safety rules and regulations or to comply with the provisions of any applicable site safety plan. Such indemnification applies, without limitation, to Occupational Safety & Health Act ("OSHA") citations, workers compensation claims (including VSSR claims), and all civil or criminal actions relating to the acts of subcontractor or any injury to subcontractor's employee(s) or any other person.

Subcontractor shall immediately report to Contractor in writing any unsafe conditions known to Subcontractor. Subcontractor shall not perform any work until it has verified that no unsafe conditions exist and/or any unsafe conditions have been corrected. Where required by regulations or the terms of a site safety plan, such verifications shall be by Subcontractor's competent person. Subcontractor shall remedy any unsafe conditions caused by Subcontractor's own actions prior to continuing with work in its areas, and shall advise other employers with employees in the area of the conditions. Contractor's project team is authorized to stop or suspend any work that is being performed in an unsafe manner, and Subcontractor shall not be entitled to any extension of time to complete its work on account of such stoppage or suspension. In addition to the other remedies in this Agreement, Contractor may assess and charge Subcontractor, after one initial warning, \$500.00 for each safety violation by Subcontractor. Such general right of Contractor shall not alter the obligation of Subcontractor to be responsible for safety in its specific trade, and the exercise of such right by Contractor shall not result in Contractor's being regarded as an expert in subcontractor's trade or responsible for the safety of Subcontractor's employees, which shall always remain the responsibility of Subcontractor.

Subcontractor, immediately after the occurrence of each accident involving injury to or death of any person or damage to property on the project or in any way relating to Subcontractor's Work, Services or Merchandise, shall deliver to Contractor a report thereof, and other pertinent information, which is to include a copy of any accident report delivered to Subcontractor's insurance carrier. Subcontractor shall properly record and investigate any injuries and any "near-miss" situations that occur on the jobsite or in connection with Subcontractor's work. Subcontractor shall fully cooperate with Contractor and its representatives in any investigation of safety or other issues. Subcontractor shall also immediately report any OSHA investigation relating to the site to Contractor and provide to Contractor a copy of any materials or communications supplied by OSHA to Subcontractor.

Subcontractor will not permit any third-party or non-employee, including state or federal officials and vendors or subcontractors, to enter the project site without Contractor's prior written authorization.

36. LABORERS ON SITE. Subcontractor's employees shall be skilled in their trades. Any employee of Subcontractor may be refused admittance to the premises or may be requested to leave the premises at any time by Contractor, and Contractor shall not be required to have or to state any reason for such action. In the event that any employee or employees of Subcontractor are so barred from the job, Subcontractor shall immediately replace such employee or employees with employees satisfactory to Contractor. Should any workers performing the work engage in a strike or other work stoppage or cease to work due to picketing or a labor dispute of any kind, Contractor may, at its option and without prejudice to any other remedies it may have, after forty-eight (48) hours written notice to Subcontractor, provide any such labor and deduct the cost thereof from any monies then due or thereafter to become due Subcontractor. Further, Contractor may at its option, without prejudice to any other remedies it may have, terminate this Agreement, and shall have the right to enter upon the premises and take possession, for the purpose of completing the work, and the furnishing of the merchandise or services and all of Subcontractor's materials, tools and equipment thereon and to furnish the merchandise or services and complete the work either with its own employees or other subcontractors; and in case of such termination by Contractor, Subcontractor shall not be entitled to receive any further payments under this Agreement or otherwise but shall nevertheless remain liable for any damages which Contractor incurs. If the expenses incurred by Contractor in completing the Work shall exceed the unpaid balance due Subcontractor, Subcontractor shall pay the difference to Contractor, together with any other damages incurred by Contractor as a result of Subcontractor's default.

37. RESERVED GATES: Reserved gates may be established on the premises. If established, Entrance No. 1 shall be utilized by non-union firms, and their subcontractors, employees, suppliers and material handlers. Entrance No. 2 shall be utilized by union firms, and their subcontractors, employees, suppliers and material handlers. These entrances, if established, shall not be misused. The entrances shall also be observed by the management of Subcontractor and its subcontractors, suppliers and materialmen as well as all other employees. In the event that Subcontractor violates the provisions of this paragraph, Contractor shall have the right, without prejudice to any other rights or remedies it may have, to terminate this Agreement and exercise the remedies provided in this Agreement.

38. UNION CONTRACTS / PREVAILING WAGE: Subcontractor shall be bound by the terms, conditions, and wage rates contained in any and all of the collective bargaining agreements between Contractor and any union, which are incorporated by reference into this Agreement. Wage rates and benefits paid to employees of Subcontractor and its lower-tiers at the work site shall be no less than the prevailing wage rates in the locality where the work is performed or otherwise applicable to the project. In accordance with the other provisions of this Agreement, Subcontractor shall be bound by and shall comply in all respects with any and all applicable wage determinations applicable to the project, including Davis Bacon requirements or state prevailing wage requirements. Certified payroll compliance shall be verified by Subcontractor and warranted and represented by Subcontractor to Contractor at least monthly by, among other things, the submission of fully compliant prevailing wage reports and records and other documents as required by the subcontract documents and any governmental agency having authority or jurisdiction over the work. Certified payroll reports shall be submitted to the Contractor, "Attn: Certified Payroll Department."

39. BONDS: Subcontractor shall furnish to Contractor, if required by Contractor in its sole discretion and at no additional cost to Contractor, a payment and performance bond in accordance with the requirements of the subcontract documents, on a form and from a surety acceptable to the Contractor. The bond shall name Contractor as Obligee, shall have a penal sum not less than the entire subcontract price, and the penal sum shall be adjusted automatically to cover any increases in price on account of extra work without the necessity of surety approval. The bonded obligation shall cover any and all maintenance and warranty obligations of Subcontractor under this Agreement. Failure to supply the bond(s) upon demand shall constitute a material breach of and default under this Agreement.

In lieu of a bond, at Contractor's sole option and discretion, Contractor may request a cash security agreement in an amount equal to fifteen percent (15%) of the amounts paid and/or to be paid to Subcontractor under this Agreement. Contractor may hold such cash security amount from payments that become due Subcontractor. Such amounts shall be in addition to any amounts held by Contractor's customer as retainer, if any. The cash security may be held by Contractor until the project is accepted by Contractor's customer and all of Subcontractor's warranty obligations have been fully satisfied and such warranties have expired by the terms of the Agreement.

40. NOTICES. Except as otherwise specifically provided, all notices, claims requests, demands and proposals given hereunder by either party shall be in writing and (i) mailed by first class mail, (ii) delivered in person, (iii) sent by telecopy with confirmed receipt thereof, or (4) sent by a nationally-recognized overnight courier service, if to Contractor at its Hinckley, Ohio office, and if to Subcontractor, to the address stated in the site-specific Subcontract purchase order, or in either case, to such other address as may be furnished for such purpose. Any notice by Subcontractor of a claim for additional costs, damages or extensions of time shall be made only by certified mail, return receipt requested, to Contractor's Hinckley, Ohio offices. Any notice given in the manner provided in this Section shall be deemed given when mailed, sent or delivered and shall be deemed received when actually received. An electronic copy of what is delivered in accordance with this paragraph may be sent via email but such notice alone will not relieve Subcontractor of its obligations to send the actual document by one of the four specified means of providing notice to Contractor.

Subcontractor's Federal Employer Identification No: _____

Subcontractor's State Unemployment Insurance No: _____

ACCEPTED AND AGREED TO:

SUBCONTRACTOR:

By:

Title:

Date:

CONTRACTOR:

THE GREAT LAKES CONSTRUCTION CO.

By:

Title:

Date:

**THE GREAT LAKES CONSTRUCTION CO.
SUBCONTRACT CHANGE ORDER FORM**

CHANGE ORDER No. _____

PROJECT: _____ CHANGE ORDER NO.: _____
TO: _____ DATE: _____
PURCHASE ORDER NO.: _____
PURCHASE ORDER DATE: _____

You are hereby authorized to make the following changes in this Purchase Order and Subcontract Documents: _____

The original Purchase Order Price was\$

Net change by previously authorized Change Orders\$

The Adjusted Purchase Order Price prior to this Change Order was\$

The Purchase Order Price will be (increased) (decreased) (unchanged) by\$

The new Purchase Order Price, including this Change Order, will be.....\$

The dates set forth on the Contractor's Schedules for the Subcontractor's Work are hereby changed as follows:

(If blank, then Contractor's Published Schedule shall remain unchanged)

This Change Order fully compensates Subcontractor for any and all costs directly or indirectly related to this additional or extra work and for any direct or indirect effect upon other Work or Schedule under the Purchase Order and other Subcontract Documents. No claim for impact costs resulting from the performance of this Change Order will be permitted except to the extent included in the Change Order payment above, and any such cost impact shall be considered waived and released. No extension of time for the performance of this Change Order work or any other work under the Purchase Order or Subcontract Documents shall be allowed as a result of this Change Order, except as otherwise specifically provided above. All other terms and conditions of the Purchase Order, Subcontract Documents, and agreement between Contractor and Subcontractor remain unchanged.

Contractor: THE GREAT LAKES CONSTRUCTION CO.

By: _____

Title: _____

Subcontractor: _____

By: _____

Title: _____