

The Great Lakes Construction Co.
2608 Great Lakes Way
Hinckley, Ohio 44233-9590
("Contractor")

SUBCONTRACT

Subcontractor: _____

Project No. & Name: _____

Project Location: _____

Contractor and Subcontractor agree to be bound by the following terms and conditions, which apply to and are incorporated into the subcontract or purchase order to which these terms are attached and apply (collectively, the "Subcontract"). For purposes of the Subcontract, "Contractor" means **The Great Lakes Construction Co.** or any affiliate or subsidiary thereof issuing the subcontract or purchase order to which these terms apply, "Subcontractor" means the person or entity named above, "Customer" means the customer with which Contractor has entered into a contract relating to the Project and, if such customer is not the owner of the Project, shall include the Project owner, "Project" means the project identified on the Subcontract and includes the premises on which the Project is located, "Prime Contract" means the agreement between Contractor and its Customer for the applicable Project and all documents referenced or incorporated therein, and "Work" means the goods, merchandise, services, and/or work related to the Project that is the subject matter of the Subcontract, as further described herein. For purposes of this Subcontract, the term "Customer" includes any authorized representative (whether the architect or otherwise) of the Project owner.

1. ORDER AND ACCEPTANCE. Subcontractor's signature on the Subcontract, commencement of Work, shipment or promise of shipment of any portion of the Work, or performance of any part of the Work, whichever occurs first, shall constitute Subcontractor's unconditional acceptance of the terms and conditions of the Subcontract and Subcontractor's representation that it has visited the Project site and become familiar with the local conditions under which the Work is to be performed. Subcontractor agrees to follow the shipping and invoicing instructions issued by Contractor, which instructions are incorporated by reference into the Subcontract. Any provisions in Subcontractor's invoices, proposal, billing statements, acknowledgment forms, or similar documents that are inconsistent with the provisions of this Subcontract shall be of no force or effect and are hereby deemed to be material alterations and notice of objection to and rejection of such provisions is hereby given. 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 the changes on the face hereof. Contractor may revoke or modify this Subcontract at any time prior to acceptance by Subcontractor. Only stenographic, arithmetic, and clerical errors on the part of Contractor are subject to correction. **NO MODIFICATIONS MAY BE MADE TO THIS SUBCONTRACT WITHOUT CONTRACTOR'S EXPRESS WRITTEN CONSENT.**

2. INCORPORATION BY REFERENCE. The term "Subcontract Documents" means and includes the Subcontract (including these terms and conditions), the applicable Prime Contract, all documents attached to, referenced in, or incorporated in any of the foregoing (including without limitation all general, special, and supplemental conditions, drawings, plans, specifications, delivery and construction schedules, and safety policies and requirements, and, if applicable, any documents relating to projects involving expenditures of federal funds), and all amendments, modifications, or change orders to any of the foregoing. The Prime Contract 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.

Subcontractor agrees to perform all portions of the Work hereunder, subject to and in strict accordance with the terms and conditions set forth in the Subcontract and all Subcontract Documents. Subcontractor represents and agrees that it has carefully examined and understands this Subcontract and all of the Subcontract Documents. Contractor will provide Subcontractor with additional or revised drawings, specifications, and other Subcontract Documents as they may be developed or updated. Subcontractor shall review carefully any such updated or revised Subcontract Documents and within five (5) days notify Contractor of any inconsistencies, omissions, inaccuracies, or ambiguities in such documents. Subcontractor shall be liable to Contractor and Customer for damage resulting from errors, inconsistencies, or omissions

within or between the Subcontract Documents that Subcontractor, in the exercise of reasonable diligence, should have recognized and reported to Contractor but failed to do so in accordance with this Section.

The Subcontract Documents are intended to supplement and complement each other and shall, where possible, be so interpreted. If, however, any provision of the Subcontract conflicts with a provision of the other Subcontract Documents, or if there is a conflict within the Subcontract or within any of the Subcontract Documents, then to the extent that the conflicting provisions cannot be read to require compliance with both provisions, the provision imposing the higher quality, greater quantity or greater duty or obligation on Subcontractor, or granting greater rights or remedies to Contractor or the Customer, shall govern; *provided, however*, that if there is an irreconcilable conflict between any of the terms of this Subcontract and a specific provision of the Prime Contract or any Customer-mandated terms or forms, the expressly conflicting term in the Prime Contract or Customer-mandated terms or forms shall take precedence and control.

Subcontractor shall be bound by all interpretations of the Subcontract Documents made by Contractor's Customer or the Project architect or engineer to the same extent that Contractor is bound thereby. Subcontractor further agrees to be bound by all the terms and conditions of the Subcontract Documents, and to assume toward Contractor all of the obligations and responsibilities imposed by the Subcontract Documents, to the same extent that Contractor, in turn, is bound thereby. Subcontractor shall require its subcontractors, materialmen, suppliers, and vendors (and their respective lower-tier subcontractors, suppliers, and vendors) (collectively, "**Lower Tiers**") to be bound to the Subcontract Documents to the same extent that Subcontractor is bound thereby.

3. PRICES. Contractor shall pay Subcontractor in current funds for the performance of the Work, subject to adjustments as set forth herein, the amount set forth in the Purchase Order (the "**Subcontract Amount**"). The Subcontract Amount shall be firm for the duration of the applicable Project and not subject to escalation in any form and may be amended only by a properly executed change order. Unless otherwise specified, the Subcontract Amount includes the cost of delivery and unloading, with shipping F.O.B. Contractor's facility or the Project site as specified in the Subcontract and includes all applicable sales, use, transfer, excise, franchise, CAT, or other taxes, transportation fees, fuel surcharges, escalations, insurance, and tariffs or custom duties. (Rev. 09/01/21)

4. TERMS OF PAYMENT.

- A. Generally. Terms of payment are as set forth herein, unless different terms are expressly agreed in writing, specified on the face of the Purchase Order, or required by the Subcontract Documents. 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. Subcontractor shall submit, as a condition precedent to any payment, details of cost, waivers of lien, 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) 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 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 for any reason whatsoever, including the risk(s) associated with the creditworthiness of Contractor's Customer. If Contractor has provided performance and/or labor and material payment bond(s) for the Project, Subcontractor shall make no claim on said bonds for payment due to Subcontractor for which Customer has not paid Contractor, whether in regard to progress payments, final payment, or any claims or disputes. Contractor's surety is an express third-party beneficiary of the foregoing. Unless otherwise required by applicable Law, Subcontractor shall not be entitled to recover interest on late or past due payments. To the extent a partial payment is based upon units or quantities, the amount due to Subcontractor shall be determined based upon the estimates approved by 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.
- B. Progress and Final Payment. Progress or final payments shall be made within ten (10) days of Contractor's actual receipt of corresponding payment from Contractor's Customer, provided that all material terms of the Subcontract Documents have been satisfied. In addition to the requirements set forth in this Subcontract,

final payment shall not become due to Subcontractor until Subcontractor completes all punch list items and submits to Contractor (i) 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 Contractor or its Customer might be liable have been paid or otherwise satisfied; (ii) a certificate evidencing that the insurance required by the Subcontract Documents is in force and will remain in force following completion of Subcontractor's performance in accordance with Section 13 of these terms and conditions; (iii) releases and waivers of liens and claims of Subcontractor and each of Subcontractor's Lower Tiers; and (iv) consent of Subcontractor's surety to release of final payment.

- C. Retainage. Contractor shall have the right to withhold a ten percent (10%) retainage from any payments (whether progress payments or the final payment) due to Subcontractor, unless a different rate of retainage is required by the Subcontract Documents, in which case Contractor shall withhold retainage from any payments due to Subcontractor at the same percentage and rate being withheld by Contractor's Customer. The retainage shall be paid to Subcontractor within ten (10) days after the last to occur of the following: (i) final delivery, completion, and performance of all Work and obligations under the Subcontract by Subcontractor; (ii) 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 and Lower Tiers; (iii) delivery to Contractor of all manuals, drawings, warranties, guaranties, and other documents required by the Subcontract Documents; and (iv) Contractor's receipt of retainage from Contractor's Customer covering Subcontractor's Work. Notwithstanding the foregoing, Contractor shall have the right to withhold retainage to cover any guarantee or warranty period required by the Subcontract Documents unless a maintenance bond is provided by Subcontractor.
- D. Payment Reporting and Verification. The following payment reporting and verification requirements apply if the Project is for the Ohio Department of Transportation (ODOT) and Subcontractor is a certified DBE or is EDGE-certified, or if Subcontractor will be engaging any DBE or EDGE-certified Lower Tiers. Subcontractor must report payments to its subcontractors (DBE/EDGE and non-DBE/EDGE), suppliers (DBE/EDGE only), and trucking firms (DBE/EDGE only) as set forth herein on all Ohio Department of Transportation (ODOT) Projects, including those receiving federal funding from the U.S. DOT. The payment data reported must include any retainage withheld and any previously withheld retainage released. All such reporting must take place within ODOT's implementation of the AASHTOWare Project (AWP) Signet and/or Civil Rights and Labor (CRL) system. Subcontractor must enter and sign payments within seven (7) calendar days of the later of the date that Contractor enters its payment to Subcontractor, or the date Subcontractor pays its Lower Tier. Subcontractor also must enter and sign return of retainage within seven (7) calendar days of release to the payee. Subcontractor's payees must then verify each payment reported by Subcontractor within thirty (30) days of the payment being signed by Subcontractor. Subcontractor must verify receipt of payments from Contractor as set forth herein on all Ohio Department of Transportation (ODOT) Projects, including those receiving federal funding from the U.S. Department of Transportation (DOT). Payment verification must be performed within ODOT's implementation of the AASHTOWare Project (AWP) Civil Rights and Labor (CRL) system or, if applicable and made available, a CRL interface. Subcontractor must verify each payment from Contractor within thirty (30) days of payment being issued by Contractor. This verification must include: (i) whether the payment was received, and if so, whether it was as expected or not; (ii) the dollar amount of the payment received; and (iii) the date the payment was received. Subcontractor's agreements with its subcontractors (DBE/EDGE and non-DBE/EDGE), suppliers (DBE/EDGE only), and trucking firms (DBE/EDGE only) must include this prompt payment and reporting obligation. (Rev. 09/01/21)

5. PAYMENTS TO LOWER TIERS. Subcontractor, upon Contractor's request, shall promptly furnish to Contractor the names of all Lower Tiers used or to be used by Subcontractor in connection with the Work, including the original amounts of subcontracts and purchase orders and the amounts paid and due thereon. Subcontractor shall pay promptly when due its labor payrolls and all amounts owed by it to its Lower Tiers, unions, taxing authorities (including, as applicable, all sales and use taxes), and other governmental entities (collectively, "**Payees**"). If Subcontractor does not make such payments as required, Contractor shall have the right at its sole discretion to issue checks directly to any unpaid Payees for amounts owed to them by Subcontractor or to issue joint checks to Subcontractor and such unpaid Payees for

such amounts. The amount of such payments shall then be deducted from the Subcontract Amount, together with expenses incurred by Contractor in exercising such right. No such payment by Contractor shall be deemed to create a contractual relationship between Contractor and any Lower Tier or other third party claiming under Subcontractor.

6. SCOPE OF WORK; ADMINISTRATION. The Work of Subcontractor includes, but is not limited to, such of the following as may be necessary to perform and complete the Work: (a) 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; (b) all labor, work, supervision, cutting, patching, cleaning, temporary construction, and other services; and (c) all insurance, taxes, benefits, royalties, temporary utilities, and other related costs, except as otherwise provided in this Subcontract. Subcontractor shall be responsible for all Work under the Subcontract Documents together with any such materials, services, and work reasonably inferable therefrom as being required to produce the intended result, whether or not specifically called for in this Subcontract or the Subcontract Documents. 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 that Contractor may call, at the Project site or elsewhere, for the purpose of discussing progress of the Work, project safety, or other matters bearing on the Project or Subcontractor's Work. Subcontractor will not permit any third party or non-employee, including Lower Tiers and state or federal officials, to enter the Project site without Contractor's prior written authorization.

Subcontractor shall provide a sufficient number of personnel who are over the age of eighteen (18) and who possess the necessary qualifications, licenses, and registrations to ensure timely and proper execution of the Work. Contractor reserves the right, in its sole and absolute discretion, to require Subcontractor to remove from the Work site any employee of Subcontractor or any Lower Tier. If any employee or Lower Tier is so barred from the Work site, Subcontractor shall immediately replace such employee or Lower Tier with a replacement satisfactory to Contractor.

7. TIME AND COORDINATION. Subcontractor shall diligently and continuously prosecute and complete its Work and coordinate it with the other work being performed on the Project, in accordance with the time and scheduling requirements set forth in this Subcontract and the Subcontract Documents and any revisions or modifications thereto. **TIME IS OF THE ESSENCE OF THIS SUBCONTRACT.** Subcontractor's failure to meet, or apparent inability to meet, any delivery date, milestone date, or completion date shall constitute a material breach of this Subcontract. Subcontractor shall commence the Work upon Contractor's issuance of a notice to proceed or as otherwise directed by Contractor. Subcontractor shall perform its obligations under this Subcontract 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, Subcontractor shall coordinate and cooperate with Contractor and promptly provide Contractor with all information Contractor deems necessary to permit Contractor to develop, supplement, and amend its schedule. Subcontractor shall continuously monitor the Project so as to be fully familiar with the timing, phasing, and sequence of operations of the Work and of other work on the Project. Subcontractor shall coordinate the performance of the Work with any other work on the Project in such manner as Contractor may direct to avoid conflict or interference of Subcontractor's Work with the work of others, shall participate in the preparation of coordination drawings, and shall conform the Work to the work of Contractor and others and the Subcontract Documents to prevent or mitigate delays and avoid discrepancies (including unnecessary cutting or patching) with contiguous work.

8. DELAYS. If the progress of the Project 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, or Lower Tiers so as to cause any additional cost, expense, liability, or damage to Contractor or Contractor's Customer, then Subcontractor agrees to reimburse Contractor and Contractor's Customer for, and indemnify them against, all such costs, expenses, liabilities, and damages. Without limiting the generality of the foregoing, if liquidated damages are assessed against Contractor as a result of Subcontractor's failure to perform its 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 amounts due or which may become due to Subcontractor or by any other means available to Contractor. For clarity, the foregoing liquidated damages shall apply only to the extent that Subcontractor's failure to perform causes Customer to assess liquidated damages against Contractor and shall represent only Subcontractor's proportionate share of any such liquidated damages. Subcontractor's obligation to reimburse Contractor for Subcontractor's proportionate share of any such liquidated damages shall in no way limit Contractor's right to recover from Subcontractor any additional costs incurred as a result of Subcontractor's unexcused delay. These costs include, without limitation, claims from other

contractors whose work is affected by Subcontractor's unexcused delay, and Contractor's costs of acceleration, overtime, and other costs of remedying the effects of Subcontractor's unexcused delay.

Neither party will be liable to the other for any default or delay in the performance of its obligations under this Subcontract if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, acts of terrorism, epidemics or pandemics, governmental orders or emergency actions, or any other similar cause beyond the reasonable control of such party as determined by the Customer and/or Contractor (each such event, a "**Force Majeure Event**"), provided that (a) the non-performing party is without fault in causing such default or delay; (b) such default or delay could not have been prevented by commercially reasonable precautions and could not reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans, or other means; and (c) Contractor's Customer recognizes the Force Majeure Event. In such event, the non-performing party will be excused from performance or observance of the obligation(s) so affected for as long as such Force Majeure Event prevails and such party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and to minimize the effects of the Force Majeure Event on such party's performance. If Subcontractor is delayed in its performance due to a Force Majeure Event, Subcontractor must promptly notify Contractor by email or telephone (to be confirmed in writing within three (3) days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay, the anticipated duration of the delay, and the steps being taken to resume performance and minimize the effects of the Force Majeure Event. Subcontractor shall cooperate with Contractor and comply with any directions or orders issued by Customer or Contractor associated with any Force Majeure Event, including without limitation implementing modifications to the Project schedule, staffing requirements, and safety requirements and precautions. Notwithstanding the foregoing, Subcontractor shall only be entitled to an extension of time to perform the Work or an adjustment to the Subcontract Amount if and to the extent that Customer grants to Contractor such extension or adjustment with respect to Subcontractor's Work, and Subcontractor must submit any Claim for adjustment due to a Force Majeure Event in accordance with Section 29.

9. SITE CONDITIONS. Subcontractor represents that it has made such investigation and inspection of the nature, location, and conditions of the Project (including the character of the surface and subsurface conditions or obstacles to be encountered on, under and around the Project, access thereto, and storage and work areas available to Subcontractor thereon) as are necessary to determine the difficulty and cost to Subcontractor of properly performing and completing the Work. Subcontractor represents that it has had full opportunity to view, sample, inspect, and test the conditions on the Project premises prior to the execution of this Subcontract, and Subcontractor is not relying upon any opinions or representations of Contractor, Contractor's Customer, or any of their respective officers, agents, or employees. If conditions are encountered at the Project premises that are subsurface or otherwise concealed physical conditions that were unknown to Subcontractor and that 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 before conditions are disturbed and in no event later than forty-eight (48) 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 be entitled to additional compensation and an extension of time for performance of the Work by reason of any such conditions only if and to the extent that Contractor's Customer is liable for and actually grants the same to Contractor. Contractor, upon receipt of payment from Contractor's Customer 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 Subcontract, Subcontractor waives the right to make any claims against or to recover any damages from Contractor based upon conditions encountered at the Project premises.

10. PERMITS, LICENSES, AND COMPLIANCE WITH LAWS. Subcontractor shall obtain, pay for, and keep in effect all licenses, permits, and inspections required by any governmental authority in connection with the manufacture, performance, and completion of the Work and shall deliver to Contractor all certificates of inspection and other certificates and permits. Subcontractor shall comply with all laws, ordinances, codes, rules, orders, and regulations of federal, state, county, and/or municipal governmental entities having jurisdiction over Subcontractor, the Work, or the Project (collectively, "**Laws**"), including but not limited to those relating to wage and hour compliance, safety, health, discrimination in employment, wages, fair employment practices, and equal employment opportunity, and with the building codes and other requirements of the governing authorities applicable to the Project. In accepting this Subcontract, Subcontractor shall be deemed to represent that the Work was or will be produced or performed 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 Subcontract stating that the Work covered by the invoice was produced in compliance with applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof. Subcontractor further represents that the Work provided hereunder was or will be produced or performed in compliance with Executive Order 11246 and regulations issued thereunder, and any other standards and Laws that apply to the Project or Contractor's Customer, including those that are incorporated by reference into this Subcontract. Subcontractor shall develop and maintain a certified or approved drug free workplace program in 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 set forth in this Subcontract, Subcontractor shall provide Contractor with written verification of the implementation of an approved drug free workplace program, and compliance with Executive Order 2002-13T. Subcontractor shall take all appropriate actions to verify that each of its employees and agents are legally eligible to work in the United States, shall maintain current I-9 forms for its employees who perform the Work or are present at the jobsite, and shall participate in the E-Verify program if required for the construction project or applicable law or regulation. Subcontractor shall, if necessary, be fully qualified with the Customer. If Subcontractor is a Woman-Owned Business Enterprise (WBE), Minority-Owned Business Enterprise (MBE), or Disadvantaged Business Enterprise (DBE), and such participation is required in order for Contractor to meet any requirements, goals, or quotas under the Prime Contract, Subcontractor shall remain qualified with Customer as a WBE, MBE, or DBE throughout the term of this Subcontract. The loss of such qualification, for any reason whatsoever, is a breach of this Subcontract unless Contractor is released from the requirements, goals, or quotas, in writing, by its Customer.

11. TAXES. Subcontractor warrants and represents that it has no outstanding tax or union benefit liabilities including but not limited to city, county, state, federal income, sales, CAT, property, or other tax or assessment of any kind. Subcontractor shall file all tax returns and pay when due all taxes and contributions owing to each governmental entity or subdivision applicable to the Work or to the wages of its employees for services in connection with this Subcontract, 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, and any tax withholding or other Laws, measured upon the payroll of or required to be withheld from employees engaged in the Work; all sales, use, personal property, and other taxes (including interest and penalties thereon) required by any Laws 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; 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.

12. WORKERS' COMPENSATION. Subcontractor, at its expense, shall fully comply, and shall cause its Lower Tiers to comply, with the workers' compensation laws for each state in which the Work is performed, and with the safety and other regulations of the governmental authorities that administer such laws. Further, Subcontractor, at its expense, shall procure and maintain in full force and effect for the duration of the Work, to the extent available, workers' compensation insurance providing coverage for statutory benefits and Employer's Liability Coverage of \$1,000,000 per occurrence/accident/employee or other statutory amount if higher. The policy shall contain an all-states endorsement, except in jurisdictions where such endorsement is not available or approved. The policy shall be endorsed to provide a waiver of subrogation in favor of Contractor, except in jurisdictions where such endorsement is not available or approved. Before commencing Work, Subcontractor shall furnish to Contractor certificates evidencing that the foregoing insurance is in effect with the coverages and minimum limits specified above and with insurance companies acceptable to Contractor and that are licensed to transact business in the locale of the Project and where any other Work is to be performed.

13. INSURANCE. Subcontractor, at its expense, shall obtain prior to the commencement of the Work and maintain in effect the following minimum insurance coverages and limits with insurance carriers acceptable to Contractor:

- A. Commercial General Liability (CGL). This insurance shall be written on an occurrence basis with limits not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate. The policy shall include coverage for premises/operations, independent contractors, blanket contractual liability (sufficient to cover the liability assumed by Subcontractor under the Agreement), property damage arising out of the "XCU" hazards, completed operations, products liability, broad form property damage, personal injury, and advertising injury. The completed operations coverage shall be maintained for at least the duration of the statute of repose in the state in which the Project is located. The policy shall be endorsed on ISO form CG 25 03 to provide that the \$2,000,000 general aggregate applies

specifically for the Work under this Agreement (*i.e.* a per-project aggregate or per-location aggregate). The coverages shall be written on ISO forms CG 0001 (04/13) or comparable coverage forms reasonably acceptable to Contractor and endorsed to provide additional coverages and limits of insurance as required by this Agreement. The coverages shall not have any exclusions (including but not limited to ISO CG 22 94 or CG 22 95) for work performed by others on behalf of Subcontractor.

- B. Automobile Liability. The policy shall contain limits of not less than \$1,000,000 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 \$5,000,000 each occurrence and policy aggregate limit, shall be endorsed in the same form and manner as the Commercial General Liability, Business Automobile Liability, and Employer's Liability coverages, and shall provide coverage at least as broad as the primary coverages.
- D. Professional Liability and/or Errors & Omissions. If Subcontractor is performing any type of design or other professional services, then Subcontractor, or with Contractor's consent, Subcontractor's consultant(s), shall obtain professional liability and/or errors and omissions coverage with limits of not less than \$2,000,000 for each claim and \$2,000,000 annual aggregate. If the professional liability and/or 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. The reporting period shall be maintained uninterrupted through the applicable statute of repose in the state where the Project is located. Subcontractor shall require each of its Lower Tiers providing engineering or architectural services to maintain separate professional liability and/or errors and omissions insurance coverages to protect against claims or damages arising out of the performance of their respective services in furtherance of the Agreement.
- E. Additional Coverages: If Contractor or the Subcontract Documents require additional policies, endorsements, or coverages, longer retention periods, or higher coverage limits (including without limitation policies or endorsements for "rip and tear" / contractor's errors and omissions (*e.g.* covering costs to rip and tear or rectify defective Work), pollution liability, aviation liability, watercraft liability, cyber liability, or electronic data insurance), Subcontractor will secure such additional coverages and/or higher limits. Unless otherwise agreed in writing by Contractor, Subcontractor shall secure such additional endorsements or coverages at no additional cost to Contractor. Subcontractor shall require each of its Lower Tiers to carry insurance similar to that required of Subcontractor by the Subcontract Documents and shall provide Contractor with evidence of such coverage upon request.

Subcontractor's CGL, umbrella, and excess insurance policies shall amend the definition of "Occurrence" such that the policies provide coverage for property damage arising out of Subcontractor's Work, including but not limited to coverage for damages, including consequential damages, caused by, attributable to, or arising from Subcontractor's defective workmanship. Such coverage shall also apply to work furnished or performed by Subcontractor's Lower Tiers.

Contractor and Contractor's Customer shall be named as additional insureds on Subcontractor's CGL liability insurance coverages for both ongoing and completed operations and for liabilities or claims arising out of the Work, and such insurance, including all primary and excess policy layers, shall be endorsed using ISO Additional Insured Endorsements CG2037 (04/13) and either CG 2010 (04/13) or CG 2038 (04/13), or an endorsement providing equivalent coverage to the additional insureds, so as to make each such policy primary and non-contributory to any liability insurance carried by Contractor. Contractor and Contractor's Customer also shall be named as additional insureds on Subcontractor's automobile liability insurance coverages using ISO Additional Insured Endorsement CA2048. 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. No coverage required herein shall include residential exclusions or exceptions.

Certificates of Insurance, and copies of endorsements and policies if requested, acceptable to Contractor shall be delivered to Contractor prior to commencement of the Work. These Certificates as well as insurance policies required by this Section shall contain a provision that no coverage will be canceled, allowed to expire, or materially changed until at least thirty (30) days' prior written notice has been given to Contractor. The foregoing insurance coverages are required to remain in force for the durations specified herein or, if not specified, for a period of five (5) years after final payment by Contractor to Subcontractor, and an additional certificate evidencing continuation of such coverage shall be submitted to Contractor prior

to final payment. Subcontractor waives all rights against Contractor, Contractor's agents and employees, and Contractor's Customer, for damages caused by fire or other perils to the extent covered by any insurance applicable to the Project or the Work, except such rights as it may have to the proceeds of any such insurance. To the fullest extent permitted by law, on all of the required insurance coverages, Subcontractor agrees to waive, and will require its insurers to waive, all rights of subrogation against Contractor, Contractor's agents and employees, Contractor's Customer, and such other entities as are required by the Subcontract Documents. Subcontractor shall require from its Lower Tiers by appropriate agreements, written where legally required for validity, similar waivers of subrogation in favor of Contractor, Contractor's agents and employees, and Contractor's Customer, and other parties enumerated herein. The provision of insurance as required by this Agreement shall in no event relieve Subcontractor of liability or limit any such liability for faulty or defective Work or damage resulting therefrom, Subcontractor's warranty or indemnity obligations, or any other of Subcontractor's obligations under the Subcontract Documents.

14. BONDS. If requested by Contractor, Subcontractor shall furnish a performance bond and payment bond in an amount equal to one hundred percent (100%) of the full Subcontract Amount for each bond or as otherwise may be required by the Subcontract Documents, on a form and from a surety acceptable to Contractor. The surety under the bond shall have a treasury rating acceptable to Contractor and shall be licensed to transact business in the state in which the Project is located. The Subcontractors Surety shall have an A.M. Best rating of "A- "or higher. If at any time the A.M. Best rating of the surety who executes required performance, payment &/or maintenance bonds drops below "A- ", then Subcontractor shall, within 10 days from receipt of a request from Contractor and at its sole expense, deliver replacement performance and payment bonds executed by a surety in full compliance with this Article. The Failure of the Subcontractor to provide an acceptable replacement surety within the referenced time frame shall be a material breach of this contract. The bond(s) shall name Contractor as obligee and shall have a penal sum not less than the entire Subcontract Amount, 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 Subcontract. Failure to supply the bond(s) upon demand shall constitute a material breach of this Subcontract. The cost of any bond premiums shall be included in the Subcontract Amount unless otherwise specified on the face of the Subcontract or in this Subcontract. Payment & Performance Bonds (must be on GLC forms). Original Bonds must be mailed to the Hinckley office. Maximum Payment will be made up to the percentage and/or amount quoted based on a verified invoice from your Surety. When submitting Original Bonds, please provide a copy of the invoice from your Surety as backup. In lieu of a bond, at Contractor's sole option and discretion, Contractor may require cash security in an amount equal to fifteen percent (15%) of the Subcontract Amount. 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 Subcontract Documents. (Rev. 09/01/21)

15. CANCELLATION; DEFAULT; TERMINATION. This Subcontract is not subject to cancellation or modification by Subcontractor, in whole or in part, except with Contractor's express prior written consent.

- A. UNAVOIDABLE CANCELLATION. Contractor reserves the right in its sole discretion to cancel the Subcontract 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 affecting Contractor. Such cancellation shall be without penalty to Contractor and subject to Subsection D. In no event shall Contractor be liable to Subcontractor for any incidental, consequential, or special damages or for lost overhead or profit claims for such termination.
- B. DEFAULT; SUPPLEMENTATION; TERMINATION FOR CAUSE. Subcontractor shall be in default if it fails to: (i) adequately perform any of its obligations under the Subcontract Documents, (ii) adequately staff the Project and perform the Work with reasonable diligence and promptness using sufficiently skilled employees and supervision to maintain satisfactory progress, (iii) pay when due all amounts owed to its employees and Lower Tiers, or (iv) comply with any of the terms or conditions of this Subcontract or the Subcontract Documents. If Subcontractor's default is incapable of cure, or if Subcontractor's default is curable but Subcontractor fails to cure such default within three (3) business days after receiving notice from Contractor thereof, then without prejudice to any other right or remedy Contractor may have, Contractor may terminate this Subcontract or Subcontractor's right to proceed with the Work, in whole or in part. Additionally, if Subcontractor is in default, then without terminating this Subcontract, Contractor may remedy Subcontractor's

default, supplement Subcontractor's performance, and/or complete Subcontractor's Work at Subcontractor's expense with Contractor's own forces or through the labor force of a third party. Contractor also may take possession of all or any materials, fabricated items, supplies, and equipment furnished for the Work and may use the same in completing the Work or otherwise remedying Subcontractor's default. Subcontractor shall not be entitled to payment for any Work provided after the date of termination or supplementation. Contractor shall have the right to deduct the cost of remedying Subcontractor's default, supplementing Subcontractor's forces, and/or completing Subcontractor's Work, and any related damages, from any amounts then or thereafter due Subcontractor hereunder. If the costs incurred by Contractor in exercising its rights hereunder exceed the unpaid balance due or payable to Subcontractor, Subcontractor shall on demand pay the difference to Contractor, together with any damages incurred by Contractor as a result of Subcontractor's default. If Contractor exercises its rights of supplementation, correction, and/or completion, Subcontractor also shall be liable to Contractor for ten percent (10%) of all costs and expenses incurred by Contractor thereby to cover Contractor's administrative costs and expenses, together with legal fees and other costs of enforcement of the Subcontract. If a termination under this Subsection B is determined to be unjustified or wrongful, then the termination shall be treated as a "convenience termination" under Subsection D, and Subcontractor's remedies are limited as provided for in Subsection D.

C. **TERMINATION FOR INSOLVENCY.** Contractor also may cancel, terminate, or rescind all or any part of this Subcontract upon three (3) days' prior written notice to Subcontractor if (i) Subcontractor becomes insolvent or proceedings are instituted by or against Subcontractor under any provisions of any federal or state bankruptcy or insolvency laws, (ii) Subcontractor ceases its operations, (iii) 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.

i. **Termination Absent Cure.** If Subcontractor files a petition under the Bankruptcy Code, this Subcontract shall terminate if Subcontractor or Subcontractor's trustee rejects the Subcontract or, if there has been a default, Subcontractor is unable to give adequate assurance that Subcontractor will perform as required by this Subcontract or otherwise is unable to comply with the requirements for assuming this Subcontract under the applicable provisions of the Bankruptcy Code.

ii. **Interim Remedies.** If Subcontractor is not performing in accordance with the Project Schedule at the time a petition in bankruptcy is filed or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to assume this Subcontract and provide adequate assurance of its ability to perform, may avail itself of such remedies under this Subcontract as are reasonably necessary to maintain the Project Schedule. Contractor may offset against any sums due or to become due to Subcontractor all costs incurred in pursuing any of the remedies provided including, but not limited to, reasonable overhead, profit, and attorneys' fees. Subcontractor shall be liable for the payment of any amount by which such expense exceeds the unpaid balance of the Subcontract Amount.

If a termination under this Subsection C is determined to be unjustified or wrongful, then the termination shall be treated as a "convenience termination" under Subsection D, and Subcontractor's remedies are limited as provided for in Subsection D.

D. **CONVENIENCE TERMINATION / SUSPENSION.** Contractor shall have the option at any time, for any reason or no reason (whether or not Subcontractor is in default), upon written notice to Subcontractor, to terminate this Subcontract in whole or in part, or to delay or suspend the delivery or completion of all or any part of the Work. Such termination, delay, or suspension shall be without cost to Contractor. Subcontractor only shall have the right to compensation (a) in the case of termination, for actual costs of Work furnished by Subcontractor in accordance with this Subcontract prior to such termination; provided, however, that in no event shall such amount, together with all previous payments made to Subcontractor, exceed the Subcontract Amount or the amount actually received by Contractor from Customer for Subcontractor's Work; or (b) in the case of delay or suspension, for documented and reasonable handling and storage charges, overhead, and other expenses incurred as a direct result of such delay or suspension to the extent actually paid to Contractor by Customer on behalf of Subcontractor. Under no circumstances shall Subcontractor be entitled to anticipated profits, lost profits, or overhead for Work that remains to be furnished or performed. Except as expressly

provided herein, Subcontractor shall not be entitled to indirect expenses, other termination costs or expenses, or for any consequential, incidental, or special damages arising from such termination or suspension. Contractor's obligation to pay Subcontractor is expressly conditioned on Contractor's receipt of payment from Customer on account thereof. All other terms and conditions to payment set forth in this Subcontract shall apply to amounts Subcontractor claims under this Section.

16. SUBCONTRACTOR'S REPRESENTATIONS AND WARRANTIES. Subcontractor represents that it possesses the qualifications, licensing, experience, and financial resources to complete the Work (including, if applicable, any design-assist services) in accordance with the Subcontract Documents. Subcontractor warrants to Contractor, in addition to all warranties implied by law, that each item of Work, together with all related packaging and labeling 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 Laws, 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; (d) conform to all of Contractor's specifications, the Subcontract Documents, and all articles shown to Contractor as samples of Subcontractor's Work; (e) be merchantable at the time of delivery to Contractor and at the time of use by Contractor's Customer; and (f) be fit and safe for sale and use by Contractor or Contractor's Customer for which such items are ordinarily intended and for any particular intended use of which Subcontractor has actual or constructive knowledge. All warranties set forth in this Section, or in any other part of this Subcontract or Subcontract Documents (including warranties incorporated 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 Subcontract against Subcontractor for the applicable statutes of limitation for breach of a written contract. Subject to the foregoing, Subcontractor warrants all Work for a period of no less than one (1) year from the date of delivery or completion of Subcontractor's performance under the Subcontract or substantial completion of the Project, whichever is later. If the Prime Contract or Subcontract Documents specify a longer warranty period, the longer period shall apply. In the event of a warranty claim, Subcontractor shall promptly remove and replace any defective or nonconforming Work at Subcontractor's sole cost and expense. Subcontractor also shall be responsible for the cost of correcting the goods, work, and property of Contractor, Contractor's Customer, and others damaged by Subcontractor's defective Work, including Subcontractor's performance of warranty work. Should Subcontractor fail to perform warranty work within a reasonable time, Subcontractor shall be responsible for all costs and expenses incurred by Contractor in remedying any warranty work, together with legal fees and other costs of warranty enforcement or cure.

17. INDEMNIFICATION. To the fullest extent permitted by applicable law, Subcontractor shall indemnify, hold harmless, and defend Contractor, Contractor's surety, and Contractor's Customer, and their respective officers, employees, partners, agents, and representatives (collectively, the "**Indemnitees**"), for, from, and against any claim, lien, mechanics' lien, attested account, cause of action, lawsuit, demand, fine, penalty, assessment, loss, damage of whatever kind or description (including any special, incidental and consequential damages), costs, and expenses (including legal fees and related costs and expenses, whether incurred in defending claims or in seeking reimbursement and indemnity from Subcontractor or otherwise) (the foregoing, collectively, "**Losses**") arising from or relating to Subcontractor's performance under this Subcontract, Subcontractor's negligence or other wrongful acts, Subcontractor's default or breach of this Subcontract, Subcontractor's violation of any applicable Laws, Subcontractor's faulty or defective Work, or Subcontractor's breach of any representation or warranty contained herein. The scope of this indemnity obligation includes, without limitation, any and all Losses relating to personal injury, death, or property damage that may result from any products liability claims relating to the Work. The scope of this indemnity obligation applies to the acts or omissions of Subcontractor, its agents, employees, and Lower Tiers, and anyone for whom Subcontractor is legally responsible. Subcontractor, at Subcontractor's sole expense, shall promptly dispose of all such Losses, defend all lawsuits filed against the Indemnitees on the account thereof, pay all judgments rendered against Contractor in such lawsuits (including any prejudgment interest assessed against any indemnitee hereunder), and reimburse the Indemnitees in cash upon demand for all reasonable expenses incurred by them on the account thereof including, but not limited to, reasonable attorney fees, expert witness fees, and court costs. Subcontractor's indemnity obligations shall not apply to any Losses to the extent proximately caused by the negligence or willful misconduct of any of the Indemnitees. However, Subcontractor shall remain obligated to defend the Indemnitees at Subcontractor's expense until such time that it is conclusively determined that the Loss 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 Section shall not be limited in any manner whatsoever by any immunity or limitations of liability afforded to Subcontractor under workers' compensation laws, constitutions, or any other employee benefit acts under laws in any state applicable to the Work. For purposes of this indemnity under Ohio law and for Projects located in the State of Ohio, Subcontractor specifically waives any immunity afforded it by Ohio Constitution Article 2, Section 35 and Ohio Revised Code Section 4123.74.

18. LIEN WAIVER AND BONDING LIENS; ADDITIONAL INDEMNITY. For good and valuable consideration, including the negotiated Subcontract Amount, and to the extent that Contractor has made payment of undisputed amounts owed to Subcontractor hereunder, Subcontractor agrees that it will not file, and it shall not permit its Lower Tiers, laborers, or unions (including lower tiers of any of them) to file, any mechanics' liens or attested accounts to secure payment for Work furnished in furtherance of the Subcontract. 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 Subcontract. Contractor shall be entitled to set off against any amounts due or to become due to Subcontractor under this Subcontract an amount equal to two times the amount of the lien or attested account or other claim of any of Subcontractor's Lower Tiers, laborers, or unions (including their 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's Lower Tiers, unions, or laborers (including their lower tiers). Subcontractor further agrees to indemnify, defend, and hold harmless the Indemnitees for, against, and from any and all liens, claims, damages, demands, and causes of action by any Lower Tiers, laborers, unions, and other persons or entities working directly or indirectly for them arising from or relating in any way to any Work furnished in furtherance of this Subcontract. Within three (3) days of receipt of written notice from Contractor, Subcontractor shall cause to be discharged and released any lien, attested account, or claim of Subcontractor or any of Subcontractor's Lower Tiers, laborers, unions, and other persons or entities working directly or indirectly for them. In the event of a lien or attested account by a Lower Tier, laborer, union, or person or entity working directly or indirectly for them, 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 (in accordance with Ohio Revised Code § 1311.01 *et seq.* for Projects in the State of Ohio). If Subcontractor fails to honor its obligations under this Section, then Contractor may, at Contractor's sole option (and without incurring direct liability to any third-party to this Subcontract), pay the claim directly and deduct the amount of Contractor's direct payment from the amounts due or payable to Subcontractor under this Subcontract.

19. SHOP DRAWINGS; SUBMITTALS. Subcontractor, at its own expense, shall prepare and submit to Contractor such shop drawings, samples, models, and other submittals (collectively, "**Submittals**") for the Work as may be requested by Contractor. Such Submittals shall be approved in writing by Contractor before Subcontractor proceeds under this Subcontract. No approval of any Submittals nor the making of any payment to Subcontractor shall constitute an acceptance of any 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 hereunder.

20. OWNERSHIP OF DOCUMENTS. All plans, drawings, reports, manuals, specifications, test data, or other documents or information, including Submittals, prepared or furnished by Subcontractor pursuant to this Subcontract 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 to Contractor a royalty-free, transferable license for Contractor to use such documents and Submittals in connection with the Project or as otherwise required by the Subcontract Documents.

21. CONFIDENTIAL INFORMATION. Subcontractor acknowledges that, in the course of this Subcontract, it may obtain from Contractor or Customer information that is of a confidential or proprietary nature ("**Confidential Information**"). Subcontractor shall not use Confidential Information for any purposes outside of this Subcontract. Subcontractor shall not, without Contractor's prior written consent, disclose any Confidential Information to any party other than to those employees or subcontractors of Subcontractor who have a need to know such information for the performance of their duties in connection with the Subcontract. Subcontractor shall be responsible for any breach of this provision by its employees, agents, or Lower Tiers. Subcontractor acknowledges that any Project information provided by Contractor is for informational purposes only, and the accuracy and completeness of such information is not warranted by Contractor.

Subcontractor acknowledges and agrees that Subcontractor shall only be entitled to rely upon such information to the same extent that Contractor is entitled to such reliance under the Subcontract Documents.

22. DEDUCTIONS AND SET-OFF; AUDITS. Any amounts due or payable to Subcontractor shall be subject to all claims and defenses of Contractor or any of its affiliated companies, whether arising from this or any other transaction or agreement, and Contractor may set-off and deduct against any such amounts all present and future indebtedness of Subcontractor or any of its affiliated companies to Contractor or any of its affiliated companies. Subcontractor shall exercise such controls as may be necessary for proper financial management under this Subcontract and to substantiate all costs incurred. Subcontractor shall keep full and detailed records and accounts related to the cost of the Work, 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. Contractor, Contractor's Customer, and their respective designated representatives shall, following reasonable notice, be afforded complete access to, and shall be permitted to inspect, copy, and audit, any and all such records and accounts.

23. DEFECTIVE WORK. Regardless of any prior payment by Contractor, Contractor reserves the right to reject or return, at any time, for full credit at Subcontractor's risk and expense (including but not limited to cost of packing and transportation), all or any part of the Work furnished by Subcontractor that (a) is defective in material or workmanship, (b) differs in any way from any drawings, specifications, or warranties contained in the Subcontract or Subcontract Documents or implied by Law, or (c) otherwise does not conform to the requirements of this Subcontract or the Subcontract Documents, and Subcontractor shall have no right thereafter to cure such defects or failure to conform. Contractor reserves the right, but shall not be obligated, to repair any defects or non-conformities and debit from Subcontractor any costs and expenses incurred thereby, plus a twenty-five percent (25%) administrative fee, 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 Subcontract 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 Work, at Subcontractor's expense. If Contractor returns defective Work or rejects non-conforming Work under this Section, Contractor may additionally cancel any remaining portion of this Subcontract.

24. INSPECTION AND PUNCH LIST. Contractor may inspect and test the Work, wherever located, during manufacture, preparation, construction, delivery, and completion. Multiple inspections shall not be grounds for objection by Subcontractor. No previous inspections by Contractor shall relieve Subcontractor of any liability under this Subcontract. If defects or nonconformities for which Subcontractor is responsible under the terms of this Subcontract are revealed by subsequent inspection, analysis, operations, use, or otherwise, Contractor may reject or revoke its acceptance of the Work, in whole or in part, at any time after such defects or nonconformities are discovered, require Subcontractor to cure or replace the defective or non-conforming Work, or pursue any other of its rights or remedies under this Subcontract. Contractor and Subcontractor shall agree on a line item in Subcontractor's schedule of values to cover punch list completion, including but not limited to incomplete and defective Work. Upon substantial completion of the Work, Contractor shall create its own punch list to be followed by the Architect's punch list of Work items to be completed by Subcontractor. Subcontractor shall have three (3) days from receipt of Contractor's and Architect's punch lists to commence completion of the punch list Work items. If in Contractor's or Architect's opinion the punch list Work is not being completed properly and in a timely manner as required by the Contract Documents, then with one (1) days' notice to Subcontractor, Contractor shall complete punch list items and deduct from the punch list line item and retainage, if necessary, any costs it incurred to complete the Work.

25. CLEAN-UP. Subcontractor at all times shall keep the Project free from rubbish, debris, and obstructions caused by its operations (including surplus materials, crates, packing, and the like, brought to the Project by Subcontractor or by others for the benefit of Subcontractor). At the time of completion of the Work 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, or Lower Tiers. If Subcontractor fails to perform the foregoing obligations, Contractor may do so and may charge Subcontractor for the costs thereof.

26. PROTECTION OF WORK. Subcontractor shall cover and at all times adequately protect the Work from damage until final acceptance by Contractor and Contractor's Customer and shall properly store and protect its own materials and those furnished to it by others. Subcontractor shall be responsible for any damage to, destruction of, or loss of the Work and any other equipment, tools, and personal property at the Project premises, whether owned, rented, or used by

Subcontractor or anyone performing any of the Work. Risk of loss to the Work shall pass from Subcontractor to Contractor upon final acceptance of the Work unless otherwise set forth in the Subcontract Documents; provided that risk of loss with respect to defective or nonconforming Work shall not pass to Contractor unless and until such nonconformities are cured or Contractor accepts the Work in writing notwithstanding the nonconformities. Until such final acceptance, any damage, destruction, or loss of the Work, however caused, shall be made good by Subcontractor at Subcontractor's expense. The foregoing obligation shall not preclude Subcontractor from making a claim under any insurance maintained for the benefit of Subcontractor, but Subcontractor shall not delay the commencement or completion of such obligation as a result of or during the pendency of any such claim.

27. PASSAGE OF TITLE. Until Contractor has inspected the Work and has accepted it as being in conformity with this Subcontract and the Subcontract Documents, Subcontractor's delivery obligation shall not be deemed complete. Subcontractor warrants to Contractor that Subcontractor shall have good title to the Work, free and clear of all liens, and that good title shall pass to Contractor, at the time of Subcontractor's delivery or furnishing of the Work.

28. CHANGES. Without invalidating this Subcontract, Contractor shall have the right to make changes in the scope of Work, time for performance, and other requirements of the Subcontract Documents. If Subcontractor claims that such changes affect the time for performance of the Work or the compensation sought by Subcontractor, Subcontractor shall notify Contractor in writing immediately, but in no event later than five (5) days 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. Subcontractor shall submit to Contractor its proposal (with labor rates, all cost computations, and supporting data in such detail as may be requested by Contractor) for eliminations of, changes in, or additions to Subcontractor's Work, the Subcontract Amount, the drawings and specifications, and any substitution of materials (including "or equal" materials) thereby requested. On receipt of such proposal, Contractor may issue a written change order directing Subcontractor to proceed with the work, and Subcontractor shall proceed immediately in accordance with each such change order. Subcontractor's signature of such change order will constitute Subcontractor's acceptance of all adjustments indicated in the change order. If Contractor does not accept the terms of Subcontractor's proposal, Subcontractor shall nonetheless proceed as directed by Contractor and may submit a Claim in accordance with Section 29. There shall be no adjustment to the time for performance or Subcontract Amount unless and until Contractor provides written authorization in advance or signs a change order authorizing such adjustment. Subcontractor shall be deemed to have conclusively waived any and all rights to payment of additional compensation or adjustment of the time for performance if Subcontractor performs any work, enters into any contracts, or takes any action (including demobilization or reallocation of resources) in connection with a change without first securing Contractor's written directive or a fully-executed change order or if Subcontractor fails strictly to comply with the notice provisions of this Section. Subcontractor shall not be entitled to any extension of time or compensation for a change in the work unless Customer grants such extension of time or compensation to Contractor and, in such case, only to the extent so granted.

29. CLAIMS. Subcontractor shall give Contractor prompt written notice of any disagreement or claim relating to or arising out of the Subcontract Documents or with respect to any action that it desires Contractor to take on its behalf against Customer in connection with any such claim. Such notice shall be in writing and submitted within four (4) days of the event giving rise to the claim or dispute. If Subcontractor fails to submit any claim or dispute in strict accordance with this Section, it shall be deemed to have waived such claim. Subcontractor 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 other responsible party. Such recovery and collection from Contractor's Customer or other responsible party is an absolute condition precedent to Subcontractor's right of recovery from Contractor. Contractor shall act as a conduit for Subcontractor's claims and shall have the right to present pass-through claims to Customer, 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 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, and Contractor reserves the right to decline to present Subcontractor's claim to Customer if Contractor in good faith disagrees with such claim. If Contractor recovers and collects damages from Contractor's Customer or other responsible party on account of Subcontractor's claims through negotiation, litigation, mediation, or arbitration, then Contractor shall tender to Subcontractor the amount actually recovered and collected less the

cost of prosecution and administration (including expert witness and consulting fees), and Subcontractor shall accept that amount as payment in full for its claims and damages, unconditionally releasing Contractor from any additional liability for damages relating to the claims. If Subcontractor's claim is denied for any reason by Contractor's Customer, other responsible party, or any court or arbitrator, or the amount claimed is not collected for any reason, Subcontractor shall release Contractor from any and all liability relating to such claims and damages. Any and all other conditions precedent to payment set forth in this Subcontract shall apply equally to amounts Subcontractor claims under this Section.

30. DISPUTES. Unless otherwise agreed in writing, Subcontractor shall continue the Work and maintain the Project schedule during the pendency of any dispute resolution. If Subcontractor continues to perform, Contractor shall continue to make undisputed payments in accordance with this Subcontract. If Subcontractor fails to continue performing the Work during the pendency of dispute resolution, Subcontractor will be responsible for all resulting damages, costs, and expenses incurred by Contractor thereby. At the sole option of Contractor, any and all claims, disputes, controversies, demands, and causes of action of whatever nature, kind, theory, or description arising from or relating to this Subcontract ("**Dispute**") shall be submitted to mandatory and binding arbitration before the American Arbitration Association in accordance with its Construction Industry Arbitration Rules. The decision and award of the arbitrator(s) shall be final and binding on Contractor and Subcontractor and may be reduced to judgment and enforced in any court of competent jurisdiction. The arbitrator(s) shall decide any issues relating to waiver of rights or timeliness of claims. Unless Contractor agrees or the Subcontract Documents require 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, 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 this Section. Contractor also shall have the right, at its option, to join Subcontractor in any arbitration or other proceeding between or among Contractor, Contractor's Customer, or other third party. This agreement to arbitrate shall be specifically enforceable under the Ohio Arbitration Act and the Federal Arbitration Act. Subcontractor shall be bound by the administrative determinations, arbitration awards, and other final judgments arrived at in accordance with the provisions of the Subcontract Documents that are binding upon Contractor with respect to any such claims.

31. PRECEDING WORK. Subcontractor, before beginning the Work, shall carefully examine the work of others that may affect its Work, determine whether it is in a fit, ready, and suitable condition for the proper and accurate performance of the Work, use all means necessary to discover defects in such other work, and notify Contractor in writing of any claimed deficiencies that may affect the Work. If such notice is not so given, all such other 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 if notified by Contractor to proceed.

32. SAFETY. Subcontractor shall require its employees at the Project to wear and use appropriate safety and health equipment and personal protective equipment ("**PPE**"), including those required to meet requirements imposed by Customer, Contractor, or any governmental agency for the prevention of the spread of disease, including without limitation COVID-19. Contractor shall have the right to furnish any PPE or other safety or health equipment that Subcontractor fails to provide, and Subcontractor shall upon demand pay Contractor's cost thereof plus twenty percent (20%) for Contractor's administrative expense, overhead, and other related costs.

Subcontractor, its officers, agents, representatives, and affiliates must abide by Contractor's standard safety policy and requirements, which are incorporated into this Subcontract. Subcontractor shall require its employees at the Project to comply with Contractor's and Contractor's Customer's Project safety requirements as detailed in the Subcontract Documents and all applicable Laws relating to safety and working conditions. Notwithstanding the foregoing, Subcontractor shall be solely responsible for preparing and enforcing its own trade and Project-specific site safety plan. Subcontractor acknowledges 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. Subcontractor shall reimburse Contractor for the costs of any corrective measures, and shall indemnify, defend, and hold harmless Contractor for Losses and damages, incurred by Contractor as a result of any acts or omissions by Subcontractor, its Lower Tiers, and their respective assigns, employees, and agents in failing to comply with any safety rules, policies, regulations, or laws including, without limitation, those relating to Occupational Safety & Health Act ("**OSHA**") citations, worker's 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. In addition to the requirements of Section 22 of the subcontract agreement, the subcontractor, after one initial warning, may be charged \$500 for each occurrence of a safety violation witnessed by Contractor's project team. (Rev. 09/01/21)

Subcontractor's project supervisor and safety director will be required to attend all safety and planning meetings required by Contractor, the Subcontract Documents, or Contractor's Customer. 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 any unsafe conditions have been corrected. Where required by Laws or the terms of a Project 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. Such general rights 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 any accident involving injury to or death of any person, or damage to the Project or any property at the Project or in any way relating to the Work, shall deliver to Contractor a written report thereof, which must 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 at the Project or in connection with the Work. Subcontractor shall fully cooperate with Contractor and its representatives in any investigation of safety or other issues. Subcontractor shall also immediately report to Contractor any OSHA investigation relating to the Project and provide to Contractor a copy of any materials or communications supplied by OSHA to Subcontractor.

Subcontractor is required to participate in a Mandatory Annual Safety Orientation. No Payments will be made without a current Safety Orientation on file. Safety Orientation will expire on March 31st of each year and needs to be renewed prior to commencing work on ANY project. (Rev. 09/01/21)

33. ENVIRONMENTAL. Subcontractor shall comply with all environmental Laws relating to the Project. Should Subcontractor or any Lower Tier cause a release of a hazardous substance, as defined by the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Transportation (DOT), including but not limited to oil or lubricating fluids, Subcontractor shall immediately report the release to Contractor. Releases shall be reported to the appropriate regulatory agency only after obtaining concurrence from Contractor. Subcontractor shall, at Subcontractor's sole expense, clean up all spills (regardless of size or reporting obligations) to the satisfaction of all governing bodies, Contractor, and Contractor's Customer. When required, Subcontractor shall have a Spill Prevention Control and Countermeasures Plan ("SPCC") and upon demand shall provide Contractor with a copy of the SPCC. Subcontractor shall comply with all applicable spill prevention requirements including but not limited to having spill kits on site, and contracts with emergency response contractors or DOT hazardous materials specialist.

34. CONTRACTOR'S PROPERTY. Unless otherwise agreed in writing, all designs, drawings, specifications, artwork, plates, patterns, dies, and tools of every description furnished to Subcontractor by Contractor, and any replacement thereof or materials affixed or attached thereto (collectively, "**Contractor's Property**") shall be and remain the property of Contractor. Such Contractor's Property, and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Subcontractor as being the property of Contractor and shall be safely stored separate and apart from Subcontractor's property. Subcontractor shall not substitute any property for Contractor's Property. Subcontractor shall use Contractor's Property only for purposes of performing under the Subcontract and for no other purpose. Such Contractor's Property while in Subcontractor's custody or control shall be held at Subcontractor's risk, shall be kept insured by Subcontractor at Subcontractor's expense in an amount equal to the replacement cost with loss payable to Contractor, and shall be subject to removal at Contractor's written request, in which event Subcontractor shall return it to Contractor in the same condition as originally received by Subcontractor, reasonable wear and tear excepted.

35. USE OF CONTRACTOR'S EQUIPMENT. Contractor may agree to permit Subcontractor to use Contractor's equipment, materials, supplies, or facilities (collectively, "**Contractor's Equipment**") in performance of the Work. Subcontractor assumes all risk associated with any such use of Contractor's Equipment. Subcontractor assumes all responsibility for physical damage to any such Contractor's Equipment used by Subcontractor or its employees or Lower Tiers. Subcontractor further agrees to accept full and sole responsibility for any and all Losses arising from or relating to damage or injury to real property, fixtures, personal property, or persons caused by Contractor's Equipment or Subcontractor's use thereof, and Subcontractor shall defend, indemnify, and hold harmless Contractor and Customer (and

their insurers, employees, officers, agents, shareholders, and representatives) for, from, and against any and all such Losses. Subcontractor accepts Contractor's Equipment as furnished, without any express or implied warranties thereto by Contractor. Subcontractor shall promptly pay for its use of Contractor's Equipment and other facilities, unless otherwise agreed prior to such use.

36. LABORERS ON SITE. Subcontractor's employees shall be skilled in their trades. Subcontractor shall require its employees at the Project to work in harmony with others working at the Project. Any employee of Subcontractor may be refused admittance to the Project or may be requested to leave the Project at any time by Contractor, and Contractor shall not be required to have or to state any reason for such action. If any employee of Subcontractor is so barred from the Project, Subcontractor shall promptly replace such employee with an employee 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 amounts then due or thereafter to become due to Subcontractor and exercise such other rights as it has hereunder.

37. RESERVED GATES. Reserved gates may be established at the Project. 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 Lower Tiers as well as all other employees.

38. UNION CONTRACTS / PREVAILING WAGE. Subcontractor shall be bound by the terms, conditions, and wage rates contained in any and all collective bargaining agreements between Contractor and any union, which are incorporated by reference into this Subcontract. Wage rates and benefits paid to employees of Subcontractor and its Lower Tiers at the Project 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 Subcontract, Subcontractor shall be bound by and shall comply in all respects with 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 certified payroll and prevailing wage reports and other documents as required by the Subcontract Documents and any governmental agency having authority or jurisdiction over the Work or Project.

39. NOTICES. Except as otherwise specifically provided, all notices, claims requests, demands, and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to be duly delivered (a) upon receipt if delivered in person, (b) three (3) business days after being sent via the United States Postal Service, postage prepaid, registered or certified with return receipt requested, (c) one (1) business day after being sent by nationally-recognized overnight delivery service (e.g., FedEx, UPS), or (d) upon transmission if sent by email with confirmation of delivery. Notices shall be sent to the parties at the addresses indicated in the Subcontract or to such other address as may be furnished for such purpose in accordance with this Section. Notwithstanding the foregoing, any notice by Subcontractor of a claim for additional costs, damages, or extension of time shall be made only by methods (a), (b), or (c) above, provided that a copy of what is so delivered may be sent via email, but such email notice alone will not relieve Subcontractor of its obligation to send notice by one of the other means specified herein. Subject to the foregoing, day-to-day communications about the Work may be accomplished by email or project management software.

40. MISCELLANEOUS.

- (a) Unless otherwise required by the Subcontract Documents, this Subcontract shall be governed, construed, and enforced in accordance with the laws of the State of Ohio, without regard to its choice of law principles; *provided, however*, that if the Project is located in a state that requires application of that state's laws, then this Subcontract shall be governed in accordance with the laws of that state.
- (b) Contractor's failure to enforce at any time any provision hereof shall not be construed to be a waiver of such provision or of the right of Contractor at any time to enforce each and every such provision.
- (c) This Subcontract, together with the Subcontract Documents and any documents incorporated herein by reference, contains the entire agreement between Contractor and Subcontractor and constitutes the complete and exclusive expression of the terms of the parties' agreement with respect to the subject matter hereof.

- (d) If the Prime Contract requires that subcontracts be approved by the Customer, this Subcontract shall become valid only upon such approval.
- (e) All rights granted to Contractor hereunder shall be cumulative and in addition to, and not in lieu of, Contractor's rights arising by operation of law or in equity.
- (f) No modification of the terms of this Subcontract shall be valid unless made in writing and signed by Contractor. Any changes to Subcontract and/or Purchase Order shall be initialed by Contractor & Subcontractor.
- (g) Should any of the provisions of this Subcontract 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.
- (h) Absent Contractor's written consent, Subcontractor may not assign any rights or delegate any duties or responsibilities that Subcontractor may have under this Subcontract, in whole or in part. 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/assignee, or both, any claim or right that Contractor may have against Subcontractor, including any right of recoupment or set-off.
- (i) Subcontractor is an independent contractor and not an agent or employee of Contractor. Subcontractor shall not hold itself out as, nor claim to be acting as, an employee or agent of Contractor.
- (j) The Subcontract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- (k) IF MARKED, THE PARTIES AGREE THAT THIS IS A FEDERAL-AID HIGHWAY CONSTRUCTION PROJECT, AND FORM FHWA-1273 (CURRENT REVISION) IS APPLICABLE TO THIS PROJECT AND IS PHYSICALLY INCORPORATED INTO THIS SUBCONTRACT.
- (l) IF MARKED, THE PARTIES AGREE THAT THIS IS AN EDGE PROJECT AND FORM PN-022 (CURRENT REVISION) ENCOURAGING DIVERSITY, GROWTH AND EQUITY (EDGE) REQUIREMENTS IS APPLICABLE TO THIS PROJECT AND IS PHYSICALLY INCORPORATED INTO THIS SUBCONTRACT.
- (m) All Certificates of Insurance and Worker's Compensation Certificates and renewals can be emailed directly at INSURANCE@GREATLAKESWAY.COM (Hard copies are not required)
- (n) Mandatory Annual Safety Orientation can be coordinated by contacting the Safety Department via email at SAFETY@GREATLAKESWAY.COM

(Rev. 10/28/21)

Subcontractor:

The Great Lakes Construction Co.:

By

Printed Name

Title

Date

By

Printed Name

Title

Date