

TERMS AND CONDITIONS OF SUBCONTRACT AGREEMENT

1. CONTRACT DOCUMENTS

- 1.1 The Contract Documents consist of (a) this Subcontract Agreement (Agreement), (b) Schedule A, (c) any written change orders, written amendments, or other written modifications to the Agreement issued after the execution of the Agreement, (d) any documents incorporated herein by reference or exhibits attached hereto and made part hereof, and (e) the Prime Contract.
- 1.2 The term "Prime Contract" as used herein refers to the agreement between Contractor and Owner, including all the general, supplementary and special conditions, drawings and specifications, written change orders, written amendments and other written modifications to the Prime Contract, and all other documents enumerated in the Prime Contract attached thereto and by reference made a part thereof. The execution of the Prime Contract is a condition precedent to the enforceability of this Agreement.
- 1.3 The term "Work" as used herein refers to the activities which Subcontractor is obligated to perform under this Agreement as identified in Schedule A and any written amendments, written change orders or any other written modifications. Subcontractor's Work includes the furnishing of all supervision, transportation, labor, services, tools, materials, equipment, and all other things necessary for the proper and timely performance of the Work in strict accordance with the terms and conditions of the Contract Documents.
- 1.4 Subcontractor, by signing this Agreement, acknowledges that Subcontractor has independently assured itself that all Contract Documents have been made available to Subcontractor and confirms that Subcontractor has had the opportunity to examine all such documents.
- 1.5 Subcontractor is bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner and others under the Prime Contract insofar as applicable to the Work, unless a more stringent requirement in the performance of the Work is provided in this Agreement, in which case this Agreement controls. In addition to Contractor's rights and remedies in this Agreement, Contractor shall also have the benefit of all rights and remedies against Subcontractor which Owner, under the Prime Contract, has against Contractor.
- 1.6 If a Subcontractor's proposal or quotation is incorporated into this Agreement, to the extent Subcontractor's proposal or quotation conflicts with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control.

2. THE WORK

- 2.1 Subcontractor will perform the Work in all respects in accordance with the Contract Documents, the plans and specifications relating thereto, and all the regulations of Owner.
- 2.2 Subcontractor acknowledges that it is thoroughly familiar with the requirements of the Contract Documents and has investigated and satisfied itself as to the Project site conditions, job requirements, availability of labor and materials, and all other conditions and requirements which could affect performance of this Agreement. If applicable, Subcontractor agrees to comply with all provisions of Owner/Contractor Controlled Insurance Program (OCIP/CCIP) that is part of the Prime Contract, including but not limited to, all premium deduction, safety and claims management requirements. Subcontractor agrees that any failure by Subcontractor to acquaint itself with the available information will not relieve Subcontractor from the responsibility of fully and faithfully performing this Agreement. Subcontractor acknowledges that its acceptance of this Agreement is based solely on its knowledge and judgment and not on any representation by Contractor not expressly included herein.
- 2.3 Subcontractor is solely responsible for the location and identification of all underground utilities for the Work. Subcontractor shall contact Gopher State One Call and any non-participating utilities for the location and marking of underground utilities prior to any excavation.

3. PERFORMANCE OF THE WORK

- 3.1 Commencement: Subcontractor will commence the Work as is agreed upon herein at any time within three (3) calendar days of notice by Contractor or as required by Owner and will proceed to completion with all due diligence and speed.
- 3.2 Schedule: Time is of the essence for both Parties. The Parties agree to perform their respective obligations so that the Project can be completed in accordance with the Project Schedule and/or Contract Documents' specifications.
- 3.3 Failure to Perform: In the event that Subcontractor fails to commence the Work within three (3) calendar days of notification to proceed, or if Subcontractor does not prosecute the Work vigorously, as reasonably determined by Contractor, Contractor will take over the Work and complete it, either by performing the Work itself or re-letting all or any part of the Work. Should the cost of completing the Work be in excess of the original Subcontract Price, Subcontractor and its Surety, if any, will be held responsible for all reasonable excess costs required to complete the Work, including legal fees and disbursements.

- 3.4 **Correction of Work:** In the event that any part of the Work or any material is determined by Contractor, Owner or Architect to be improper or defective during the actual performance of the Work, Subcontractor shall, at its expense, repair and/or replace, at Contractor's reasonable option, improper or defective Work and any damages caused thereby within three (3) days of Contractor's demand to correct the same. If Subcontractor fails to comply with its obligations under the Contract Documents, and the failure is not corrected within three (3) days after Contractor's demand, then Contractor may, without prejudice to any other right or remedy it may have, either terminate this Agreement for cause and take over and complete the Work at the expense of Subcontractor, or without terminating this Agreement, take over the Work or any portion thereof and cure such default. If the balance of the Subcontract Price is not sufficient to reimburse Contractor for the reasonable cost to cure the default and, in case of termination, complete the Work, plus any other damages caused by Subcontractor's breach, then Subcontractor shall pay the difference to Contractor.
- 3.5 **Insolvency:** If Subcontractor becomes insolvent, institutes bankruptcy proceedings or has bankruptcy proceedings instituted against it, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such event or events could impair or frustrate Subcontractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Contractor shall be entitled to request of Subcontractor or its receiver or court-appointed successor adequate assurances of future performance. Pending receipt of adequate assurances of performance and actual performance in accordance therewith, Contractor shall be entitled to take over the Work pursuant to the provisions of Subsection 3.4 above, without notice to Subcontractor.

4. PAYMENT TO SUBCONTRACTORS

- 4.1 **Subcontract Price:** As listed in Schedule A prices are to include all labor, materials, equipment, rent, supplies, taxes, insurances, and all of the items of cost necessary to complete the item(s) of Work. In the event Contractor pays any charges incurred by Subcontractor, Subcontractor must reimburse Contractor in full within five days after such payments are made. In exchange for the proper and timely performance of the Work, Contractor shall pay Subcontractor the Subcontract Price per Schedule A as follows:
- 4.1a **Unit Price:** Unit prices adjusted as required by differences between estimated and actual quantities for unit price Work items and subject to additions and/or deductions for written changes agreed upon by Contractor prior to the performance of the additional Work.
- 4.1b **Lump Sum:** Lump sum prices per Agreement and subject to additions and/or deductions for written changes agreed upon by Contractor prior to the performance of additional Work.
- 4.2 **Progress Payments:** As estimates and payments proportional to the Work done by Subcontractor are received by Contractor from Owner, Contractor will pay Subcontractor, as stipulated hereunder, except that Contractor will retain from Subcontractor not less than 5% of the total Work completed by Subcontractor until final quantities are agreed upon and final payment is made by Owner. In consideration of Subcontractor's performance of this Subcontract Agreement, Contractor will pay Subcontractor the unit prices or lump sum prices set forth on attached Schedule A on the basis of the proportion allowed and paid for by Owner.
- 4.3 **Final Payment:** Upon complete, timely and proper performance of the Work, final approval and acceptance of the Work by Owner and Contractor, and satisfaction of all other conditions of the Contract Documents, Contractor will make final payment to Subcontractor within ten (10) days after Contractor receives full payment from Owner for the Work.
- No progress or final payment to Subcontractor shall constitute approval or acceptance of Work.
- 4.4 **Extra-work Contractor Allowance:** For items of Work not listed in Schedule A for which prices are negotiated with participation of Contractor on (1) an agreed lump sum basis, (2) an agreed unit price basis, or (3) on a force account basis, Subcontractor agrees that Contractor may apply a contractor allowance in addition to Subcontractor's costs submitted to Owner for such extra Work as the compensation for such items.
- 4.5 **Direct Negotiation Deduction:** Should any work be performed or material furnished in addition to the Work listed in Schedule A as a result of direct negotiation between Subcontractor and a representative of Owner, without participation by Contractor, Contractor shall retain 15% of the gross payment or allowance for such work or materials to cover Contractor's contingent expense and margin.
- 4.6 **Final/Conclusive:** The measurements, estimates, and computations of Owner as to quantities and amount of Work done, will in all cases be accepted by the Parties as final and conclusive unless Subcontractor negotiates these items directly with Owner and Owner approves the same and notifies Contractor. Section 4.5 Direct Negotiation Deduction is not applicable to this provision.
- 4.7 **Lien Waivers:** In connection with any payment requested by Subcontractor, Subcontractor will be required to supply any and all documents requested by Owner or Contractor with respect to such payment, including, but not limited to, lien waivers and/or releases, from Subcontractor and any other person/entity performing any portion of the Work on behalf of Subcontractor, and any other documentation necessary to support the amount of payment sought.

- 4.8 Back Charges: Subcontractor has the authority to negotiate back charges directly with Owner. Subcontractor must give notice to Contractor that Subcontractor is negotiating back charges with Owner. Subcontractor authorizes Contractor to deduct any amounts due or to become due to Subcontractor any sums that are owed by Subcontractor to Contractor, as ultimately determined by Owner. These amounts so deducted shall be considered back charges. Section 4.5 Direct Negotiation Deduction is not applicable to this provision.
- 4.9 Withholding Payments: In the event of a) any breach or anticipatory breach by Subcontractor of this Agreement or any other agreement, b) the assertion by other parties of any claim against Contractor or Contractor's surety bond, arising out of Subcontractor's performance or non-performance of this Agreement, c) any defective Work or incomplete Work, d) withholding of payments to Contractor by Owner due to the Work or other Subcontractor act or omission, e) third-party claims, including but not limited to lien or bond claims, f) damage or injury caused by Subcontractor or any of Subcontractor's sub-subcontractors or suppliers to the employees, work, equipment or materials of Contractor, Owner, or any other subcontractor or supplier working on the Project, g) delays on the Project's progress due to Subcontractor's acts or omissions, or h) Subcontractor's failure to provide Contractor with evidence satisfactory to Contractor of Subcontractor's: (1) compliance with the insurance and bonding requirements of the Contract Documents; (2) compliance with its payment obligations under the Contract Documents; (3) compliance with the applicable prevailing wage requirements (including, without limitation, weekly certified payroll reports); or (4) minority, women-owned, or disadvantaged business status, where applicable. Contractor shall have the right to withhold payments due or to become due to Subcontractor sufficient to fully protect Contractor from any and all liability, loss, damage or expense therefrom and to use any withheld money to cure the reason for the withholding and to deduct the same from the Subcontract Price. Subcontractor hereby releases any claims against Contractor for Contractor's exercise of its rights under this provision.
- 4.10 Waiver of Claims: Final payment shall constitute a waiver of all claims by Subcontractor relating to the Work, but shall in no way relieve Subcontractor of liability for warranties, or for nonconforming or defective Work discovered after final payment.
- 4.11 Owner Insolvency: If Owner becomes insolvent, institutes bankruptcy proceedings or has bankruptcy proceedings instituted against it, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, and Contractor does not receive the full amount owed to it under the Prime Contract (the "Prime Contract Price"), then Subcontractor is only entitled to receive, and Contractor is only responsible for, that percentage of the Subcontract Price which is equal to the percentage of the Prime Contract Price that Contractor receives from Owner.
- 4.12 Joint Checks and Direct Payments: With respect to any portion of the Subcontract Price, Contractor has the right, but no obligation, to issue joint checks to Subcontractor and any supplier or subcontractor of Subcontractor or to a holder of a perfected security interest; or make payment directly to a supplier or subcontractor of Subcontractor or to a holder of a perfected security interest. Any such amounts shall be deducted from Subcontractor's payments.
- 4.13 Payment for Materials: Subcontractor cannot bill for materials unless Subcontractor has issued a performance and payment bond for the Project.

5. **CHANGES/CHANGE ORDERS**

- 5.1 Contractor may at any time by written change order by Contractor's authorized representative, and without notice to Subcontractor's sureties, make changes in, additions to and omissions from the Work, and Subcontractor shall promptly proceed with change, addition, and/or omission in accordance with the change order and the Contract Documents. Subcontractor is not entitled to any additional compensation for changes unless the Work was done in accordance with a written change order signed by Contractor prior to the commencement of the changed Work.
- 5.2 For changes directed by Contractor for extra Work, a written change order must be signed by both Parties, clearly stating all phases of the agreement as to the extra Work, including an equitable adjustment in the Subcontract Price. Invoices covering the incurred charges shall be sent semi-monthly and payment or deduction shall be made on the next estimate. Change order requests submitted without prior written approval from Contractor after a change has been performed will constitute a waiver of such claim by Subcontractor and, therefore, will not be paid and will not constitute unjust enrichment. For changes hereunder that reduce the scope of work or otherwise omit certain portions thereof, the Subcontract Price shall decrease accordingly.
- 5.3 For changes in the Prime Contract that have been initiated by Owner or Owner's Representative or for acts or omissions of Owner or Owner's Representative and/or defects in the Contract Documents, Subcontractor shall submit any claims it may have including notice thereof for adjustment in the Subcontract Price, Project Schedule or other provisions of this Agreement to Contractor in writing as soon as possible but no later than fifteen (15) days of Subcontractor receiving tentative finals from Contractor. If tentative finals are not given, Subcontractor must give Contractor notice of impending claims in writing in sufficient time and form to allow Contractor to process such claims within the time and in the manner provided for and in accordance with the applicable provisions of the Prime Contract. Adjustments to this Agreement shall be made only to the extent and in the manner that Contractor is entitled to relief from, or must grant relief to, Owner.

6. **WARRANTY**

Subcontractor guarantees that all materials shall be new and of the best quality of their respective kinds, unless otherwise specified in writing and that the Work shall be of good quality, free from faults and defects and in conformance with the Contract Documents and shall be satisfactory to Contractor, Owner or Architect for a period of one (1) year from Subcontractor's receipt of final payment or warranty set forth in the Prime Contract, whichever is longer. In the event that any part of the Work or any material is determined by Contractor, Owner or Architect to be improper or defective during the applicable warranty period, Subcontractor shall, immediately upon being notified in writing by Contractor to do so proceed to correct the same as its own cost and expense. If Subcontractor shall fail so to do promptly and completely, Contractor, at its option, may correct the same or cause the same to be corrected. Subcontractor shall promptly pay to Contractor the entire cost and expenses associated therewith and/or the same will be deducted from Subcontractor's payment.

7. **BONDS/SURETY**

- 7.1 Contractor shall retain 1% of the total compensation due to Subcontractor under this Agreement as Subcontractor's proportionate share of payment of Contractor's costs for bond incurred by Contractor upon the Prime Contract.
- 7.2 If required in the Prime Contract or by Contractor, Subcontractor shall furnish a performance and/or payment bonds in amounts at least equal to 125% of the Subcontract Price. The bond(s) shall be issued by a surety that is satisfactory to Contractor and premiums for such bonds shall be paid by Subcontractor, unless otherwise agreed upon in writing by the Parties. This provision will only be effective if Subcontractor is given notice of the requirement for a performance or payment bond prior to bid. If Contractor does not require Subcontractor to provide such performance and payment bonds, Subcontractor hereby authorizes Contractor to withhold an additional 5% from Subcontractor until the last to occur of all of the following: final acceptance by Owner, expiration of any warranties, or receipt by Contractor of all lien waivers from Subcontractor and any Sub-Subcontractors.
- 7.3 If bonding is required, Subcontractor represents and warrants that it has the bonding capacity contemplated herein and has made arrangements for furnishing such bonds to Contractor prior to beginning performance of the Work and that the time required to prepare and furnish such bond will not delay the start of the Work. If Subcontractor proceeds with the Work without first furnishing said bonds, whether or not such performance was permitted or encouraged by Contractor, then Subcontractor shall be deemed to have waived its right to partial payments and shall be entitled to payment only in accordance with Paragraph 4.3. Subcontractor's deemed waiver of partial payment shall not constitute an excuse or reason for nonperformance of this Agreement by Subcontractor.

8. **INSURANCE**

Subcontractor shall comply with all insurance requirements and terms and conditions relating to Insurance Requirements as set forth in Exhibit A attached hereto and incorporated herein by reference.

9. **INDEMNIFICATION**

- 9.1 **To the fullest extent permitted by law, Subcontractor shall defend (with counsel reasonably satisfactory to Contractor), indemnify and hold harmless Contractor, Owner, any Others required by Prime Contract, affiliated companies of Contractor, and the officers, directors, employees, agents, joint ventures, insurers, successors and assigns of each, from and against all actual or alleged claims, demands, causes of actions, suits, judgments, settlements (including but not limited to property damage, bodily injury, sickness or disease) liabilities, fines, penalties, damages, losses, and expenses, including but not limited to attorney, court, mediation or arbitration fees, (hereinafter the "Claim"), arising out of, relating to or connected-in any way to the Work, provided such Claim is caused in whole or in part by the Subcontractor, a sub-subcontractor or supplier of Subcontractor or anyone directly or indirectly employed by it or anyone for whose acts it may be liable.**
- 9.2 **In addition to the insurance requirements prescribed in Section 8 of this Agreement, Subcontractor shall obtain, maintain and pay for general liability coverage and endorsements that will insure Subcontractor's indemnity obligations in Section 9.1 above.**
- 9.3 **Contractor reserves the right to elect to defend, in its sole discretion and at Subcontractor's cost and expense, Owner, other indemnified parties, Contractor's Surety and/or Contractor. Contractor's reservation of such election to defend, with counsel of its own choice, shall not in any way limit Subcontractor's responsibility to indemnify and defend in accordance with Section 9.1.**
- 9.4 **In Claims against any person or entity indemnified under Section 9.1 above, by an employee of Subcontractor or anyone directly or indirectly employed by Subcontractor or for whose acts it may be liable, the indemnification obligation under Section 9.1 above shall not be limited by a limitation on the amount or type of damages, compensation or other benefits payable under workers' compensation, disability benefit or other employee benefit acts.**

10. LIENS AND CLAIMS

Subcontractor must pay promptly all amounts due its employees, subcontractors, suppliers, including amounts due to union affiliations, under this Agreement. No such payments to Subcontractor or parts thereof may be diverted or used by Subcontractor for any other purpose until all obligations or claims resulting from performance delegated by Subcontractor under this Agreement have been paid in full. To the extent Subcontractor has been paid, Subcontractor shall deliver the Work free from all liens, claims and encumbrances. Subcontractor shall, as and when requested, furnish evidence satisfactory to Contractor that all amounts due for labor and materials furnished to Subcontractor in connection with performance of the Work under this Agreement have been paid, including union health, welfare and pension fund payments and payroll taxes. Such evidence shall be furnished in such form and manner as may be requested by Contractor, and if requested by Contractor, all statements relative thereto shall be made by sworn affidavit. Subcontractor shall furnish Contractor, as and when requested by Contractor, with releases of claims, bond rights and lien rights by all persons and entities who have furnished labor, materials or other things in the performance of the Work under this Agreement.

11. PROJECT CLEAN-UP

Subcontractor will remove any equipment, excess materials, litter and debris, clean out drainage structures and pipelines, and satisfactorily restore the Project site to a condition that is reasonably satisfactory to Contractor and Owner, within two days after notification by Contractor. Should Subcontractor fail to do so, Contractor may accomplish the clean-up and deduct the costs of same from moneys payable to Subcontractor.

12. DELAYS and LIQUIDATED DAMAGES

- 12.1 The unavailability of materials at their scheduled time of installation will not be a reason for delay of the Work.
- 12.2 Subcontractor is only entitled to an adjustment of the Subcontract Time if Subcontractor notified Contractor in writing of the event giving rise to the delay or suspension within forty-eight (48) hours after the cause of such event occurred and Contractor obtains an extension of time from Owner under the Prime Contract. In no event shall the extension of Subcontract Time be longer than the time extension granted to Contractor under the Prime Contract. Subcontractor shall not be entitled to any increase in the Subcontract Price or for damages resulting from any delays or suspension, regardless of the cause of such delay or suspension, unless the increase or damages is/are agreed to and paid for by Owner.
- 12.3 If Contractor is assessed liquidated damages by Owner for failure to complete the Work on time and if Contractor's delay in completion or any part of that delay in completion is caused by Subcontractor, Subcontractor agrees to pay that portion of the liquidated damages caused or attributed to Subcontractor's failure to complete the Work on time in accordance with the Project Schedule.

13. APPROVALS

Within two weeks of the date of this Agreement, or as required by the Prime Contract, Subcontractor will submit all necessary shop drawings, lists of materials (itemized as to type, source, etc.) or any other information which may be requested by Owner for their approval. All other communication required between Subcontractor and Owner or Owner's Representative in regards to the Work must be transmitted through Contractor.

14. PROJECTS WITH FEDERAL FUNDS

For all projects that include federal funds, Subcontractor agrees to comply with FHWA 1273: Required Contract Provisions Federal-Aid Construction Contracts which is physically attached hereto and therefore incorporated into this Agreement. Further, Subcontractor agrees it will physically incorporate FHWA 1273: Required Contract Provisions Federal-Aid Construction Contracts in all lower-tier subcontracts and agreements entered into and shall require the physical incorporation of FHWA 1273: Required Contract Provisions Federal-Aid Construction Contracts into any further lower-tier subcontracts and agreements. Subcontractor's failure to do so will be sufficient grounds for withholding payments and/or termination.

15. "BUY AMERICA" REQUIREMENT

If applicable, all materials supplied on this Project are required to meet the standards of the Federal "Buy America" clause including the appropriate documentation as required by Owner. See Construction and Materials Manual (CMM) at www.wisconsin.gov/hcciDocs/contracting-info/buy-america-provision.pdf, section 2-28.4 which references this requirement and provides access to the "Buy America Certification" from ws42567.

16. COMPLIANCE WITH LAWS

- 16.1 Subcontractor and, if applicable, its employees, represent that they are properly licensed and will remain properly licensed through the Project, and that its subcontractors are and will remain properly licensed to perform the Work required under the Contract Documents.
- 16.2 Subcontractor and its employees shall keep themselves fully informed of all federal, state, and local laws, by-laws, ordinances, orders, decrees, and regulations of the governing bodies, courts and agencies having any jurisdiction or authority which, in any manner, affects those engaged or employed on the Work or which in any way affects the conduct

of the Work or the execution of any documents in connection therewith. Contractor relies on Subcontractor's knowledge of the ordinances, codes, rules and regulations that apply to its trade. Subcontractor and its employees shall at all times observe and comply with such laws, ordinances, regulations, orders, decrees and will indemnify and hold harmless Contractor, Owner, and their representatives against any claim (including legal fees) for liability arising from or based on the violation of any such laws, ordinances, regulations, orders, or decrees whether by Subcontractor and its employees.

- 16.3 Subcontractor shall execute and file such documents, statements, and affidavits required under any applicable federal or state law or regulation affecting the Work or the prosecution of the Work thereunder. Subcontractor shall permit the examination of any records made subject to such examination by any federal or state law or by regulations promulgated thereunder by any federal or state agency charged with the enforcement of such law.

17. **WORKPLACE SAFETY**

Subcontractor shall take all reasonable safety precautions pertaining to the Project site and the Work and the conduct thereof. Subcontractor acknowledges receipt of and agrees to comply with the **General Safety Rules** which is incorporated into and made part of this Agreement. Subcontractor shall, at its expense, conform to the basic safety policies of Contractor and shall comply with all applicable federal, state and local rules, standards, regulations and record-keeping requirements. Subcontractor agrees that the prevention of accidents to workmen engaged upon or in the vicinity of the Work is its responsibility, even if Contractor has established and implemented a safety program for the entire Project.

18. **CONTRACTOR'S EQUIPMENT: "AS IS and SOLE RISK"**

In the event that Subcontractor by rental, loan or otherwise, makes use of any of Owner's or Contractor's equipment, scaffolding or other appliances, whether the same is owned, rented, leased or otherwise, by Owner or Contractor, Subcontractor represents that the person(s) using such items is/are properly trained and, if necessary, licensed, to use such items and agrees to (i) accept such items in their "AS IS" condition, (ii) use such items at the sole risk of Subcontractor, and (iii) defend, hold harmless and indemnify Contractor and its officers, directors, employees, insurers, agents, successors and assigns against all claims, fines, penalties, damages, losses and expenses, including attorney fees, of every nature of every kind arising from Subcontractor's use thereof.

19. **PROTECTION OF WORK**

- 19.1 Subcontractor is responsible for protection of the Work and the work of others from damage caused by its operations until final completion and acceptance thereof by Owner and Contractor, unless otherwise agreed to by the Parties in writing. Subcontractor at its sole cost and expense shall repair or replace, at Contractor's option, any damage to the Work, and any other damages caused thereby, that occurs prior to final completion and acceptance by Owner and Contractor.
- 19.2 Subcontractor is responsible for adequately and properly protecting the Work by signs, lights, banners, supports, guards, cones, barricades and any other means necessary so as to avoid injury to persons and property. Without limiting the generality of the foregoing, the methods of protection used by Subcontractor must never be less than those required by law, ordinance, rule, regulation, order, and decree or required by Owner.

20. **DISPUTES**

Any dispute or claim between Contractor and Subcontractor arising out of or relating to this Agreement shall, at Contractor's sole option, be resolved by litigation, binding arbitration, or the dispute resolution clause of the Prime Contract. Subcontractor does not object to and consents to the joinder and participation of any person or entity in an arbitration involving Contractor and Subcontractor that arises out of or relates to this Agreement or the Work. Pending a final determination of a dispute or claim, Subcontractor shall proceed diligently and expeditiously with the Work in accordance with the Contract Documents. In the event Contractor or Subcontractor institutes legal proceedings or arbitration against each other, Contractor shall be entitled to recover from Subcontractor all costs and attorney fees related thereto if Contractor is the prevailing Party therein, and Subcontractor shall be entitled to recover from Contractor all costs and attorney fees related thereto if Subcontractor is the prevailing Party therein.

21. **ATTORNEY FEES**

Subcontractor is responsible to Contractor for all its reasonable expenses, including attorney's fees and costs, Contractor may incur in (a) enforcing any term or condition of this Agreement, (b) in connection with any demand or action (including garnishment) commenced by or involving any creditor of Subcontractor, including any subcontractor or material supplier that contributed labor or materials for the Work, or (c) in connection with the successful defense or settlement of any claim or demand of Subcontractor.

22. **LABOR**

- 22.1 When applicable, Subcontractor will comply with the provisions of written collective bargaining agreements with the appropriate trade unions as set forth in the local union agreements for the Work described herein and such labor contracts. Subcontractor agrees to indemnify and hold Contractor harmless for any loss, liability, cost or damage, including legal fees arising out of or from Subcontractor's failure to observe and comply with the applicable provisions of such collective bargaining agreements.

22.2 Failure at any time to comply with any of the provisions of such agreements will, at the option of Contractor, be cause for immediate termination of this Agreement for cause and Contractor shall have all of the rights contained in Section 23 with regard to such termination. If, by reason of strikes, picketing or disputes of any nature between Subcontractor and any individual, group or organization, Subcontractor is persistently and repeatedly, or for a period of five (5) consecutive days, unable to supply enough properly skilled workers or proper materials to perform the Work defined in this Agreement, Contractor may terminate this Agreement for cause and proceed in accordance with Section 22 hereof.

23. SUSPENSION AND TERMINATION

23.1 Contractor may suspend the Work, in whole or in part, for cause, for convenience or if the Prime Contract is suspended, in whole or in part. Subcontractor shall immediately stop the Work and resume the Work as directed by Contractor.

23.2 Contractor may terminate this Agreement for cause if Subcontractor fails to cure a default within three (3) days of Contractor's written notice of the default to Subcontractor. Upon such termination, Contractor may, among other things, take over the Work and any materials, equipment and/or subcontractors of Subcontractor with respect to the same. Contractor may use the balance of the Subcontract Price to cure the default and complete and correct the Work. If the balance of the Subcontract Price is not sufficient to reimburse Contractor for the cost to cure the default and complete and correct the Work, plus any other damages caused by Subcontractor's breach and termination, then Subcontractor and its surety, if any, will be held responsible for all excess costs required to complete the Work, including legal fees and disbursements.

23.3 Contractor may terminate this Agreement in whole or in part without cause upon three (3) days written notice, in which case Subcontractor must immediately stop the Work. Subcontractor's sole remedy for such termination is payment for the Work properly performed prior to termination. Subcontractor shall not be entitled to any compensation for loss of anticipated profits or unallocated overhead. If the Prime Contract is terminated for the convenience of Owner, Subcontractor shall not be entitled to receive any greater amount than Contractor may, on behalf of Subcontractor, recover from Owner for such termination.

24. RELATION OF PARTIES

For the purposes and to the extent set forth in this Agreement, Subcontractor's relationship to Contractor shall, during the term of this Agreement, be that of an independent contractor. Nothing in this Agreement shall create, or be deemed to create an employee, agent, joint venturer or partner of Contractor. Both Parties acknowledge that Subcontractor is not an employee for state or federal tax purposes. Neither Subcontractor nor anyone employed by or acting for or on behalf of Subcontractor shall ever be construed as an employee of Contractor. As an independent contractor, to the extent permitted by law, Subcontractor or anyone claiming through Subcontractor is not entitled to any compensation or benefits of Contractor. Subcontractor shall be responsible for the work, materials, acts and omissions of its employees, agents, consultants, contractors, and any other person or entity performing any portion of the Work on behalf of Subcontractor or for whose acts Subcontractor may be responsible.

25. ASSIGNMENT

Subcontractor will not assign or sublet any portion of the Work under this Agreement without first obtaining the written consent of Contractor.

26. IMPLEMENTATION OF CLEAN AIR ACT

Any facility to be used in the performance of this Agreement, unless exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604), Executive Order 11738, and regulations in implementation thereof (40 C.F.R., Part 15), is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to (40 C.F.R. 1.5.2.0. 2). Owner and Contractor shall be promptly notified prior to approval of this Agreement of the receipt by the proposed Subcontractor of any communication from the Director, Office of Federal Activities, E.P.A., indicating that a facility to be utilized in performance of this Agreement is under the consideration to be listed on the E.P.A. List of Violating Facilities.

27. COMPLIANCE WITH OSHA and MSHA STANDARDS

Subcontractor warrants to Contractor, that all machinery, accessories, parts and/or other goods and materials used by Subcontractor on the above named Project are designed, manufactured and/or constructed, and are capable of being operated effectively, so as to comply with (1) the Occupational Safety and Health Act of 1970, as amended, and with the standards and rules issued thereunder, (2) the Mining Safety and Health Act with the standards and rules issued thereunder and 3) other federal, state, local laws, ordinances, and regulations issued, with respect to occupational safety and health. Subcontractor agrees to indemnify and hold Contractor harmless for, of, and from any loss Contractor may sustain by reason of Subcontractor's failure to comply with all applicable safety laws, rules and regulations in connection with the design, manufacture and/or construction of machinery accessories, parts and/or other goods and materials on the above named Project. Subcontractor further warrants that it will operate in compliance with all applicable federal, state and local law, ordinance, and regulations issued with respect to occupational health and safety. Subcontractor agrees to indemnify and hold Contractor harmless for, of and from any loss Contractor may sustain by reason of Subcontractor's failure to

comply with any federal, state and local law, ordinance, and regulations issued, with respect to occupational health and safety.

28. **EQUAL OPPORTUNITY CERTIFICATE**

In accordance with the Nondiscrimination and Equal Employment Opportunity (EEO) requirements of federal, state and pertinent local law, Subcontractor certifies as to the following and agrees that the terms of this certificate are hereby incorporated by reference into any contract awarded. Subcontractor hereby acknowledges and agrees to abide by these provisions and agrees to inform all subcontractors in its employ of these provisions.

Non-Discrimination

Subcontractor certifies that it will not discriminate against any employee or applicant because of race, creed, color, religion, sex, age, national origin, disability, veteran status, marital status, sexual orientation, military status, arrest or conviction record or any other characteristic protected by state or federal law. This includes but is not limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

Subcontractor will post in conspicuous places, available to its employees, notices required by federal, state or local law setting forth the provisions of the non-discriminatory requirements.

A violation of this provision shall be sufficient cause to terminate this Agreement without liability for the uncompleted portion or for any materials or services for use in completing this Agreement.

Affirmative Action Program

Subcontractor certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program which shall have as its objective to increase the utilization of women, minorities and persons with disabilities and other protected groups, at all levels of employment in all divisions of Subcontractor's work force, where these groups may have been under-utilized and under-protected.

Non-Segregated Facilities

Subcontractor certifies that it has obtained or will obtain certifications regarding non-discrimination, affirmative action program and non-segregated facilities from proposed subcontractors that are directly related to this Agreement.

Reporting Requirements

Where applicable, Subcontractor certifies that it will comply with all equal employment opportunity (EEO) reporting requirements and procedures under federal, state and local requirements.

Compliance

Subcontractor certifies that it is not currently in receipt of any outstanding letters of deficiency, show cause, probable cause, or other notification of noncompliance with EEO regulations.

Domestic Partner Benefits

Subcontractor must comply with the requirements of any governmental ordinance or law regarding Equal Benefits for Domestic Partners. Failure to comply with such ordinances and any fines, penalties or costs that may arise from such failure shall be borne by the Subcontractor.

29. **REPORTS**

Subcontractor agrees to provide Contractor with Manufacturer's Certified Report(s) of Test(s) or Analysis or Certificate(s) of Compliance as may be requested or required by Owner, the specifications, and/or the Prime Contract. Subcontractor shall maintain a file of Manufacturers' Certificates of Compliance and Certified Report(s) of Test(s) provided pursuant to this Agreement so they can be provided to Contractor and/or Owner within the period specified by Owner for a period of five years after the Work is completed. Representations contained in the Certificate(s) of Compliance and all Certified Report(s) of Test(s) or Analysis are representations of the manufacturers and Subcontractor and survive the completion of this Agreement and final payment. Subcontractor hereby agrees to indemnify and hold Contractor harmless from any liability and expense including, but not limited to, legal expenses and costs, incurred by Contractor as a result of claims or litigation regarding said documents.

30. **MISCELLANEOUS**

Provisions 30.1, 30.2 and 30.3, to be effective and binding on Subcontractor, must be negotiated by Contractor and Subcontractor on a project basis prior to bid.

- 30.1 DBE/WBE/EBE/SBE: Subcontractor will share the responsibility of any DBE/WBE/EBE/SBE goals as per requirements of Prime Contract.

- 30.2 Apprentice/Trainee: Subcontractor will share the responsibility of any required apprentice/trainee goals as per requirements of Prime Contract.
- 30.3 Residency: Subcontractor will share the responsibility for residency requirements at the same ratio as per requirements of Prime Contract.
- 30.4 Waiver of Consequential Damages: Subcontractor and Contractor waive any and all consequential and incidental damages arising out of or relating to the Work or this Agreement, including a breach thereof.
- 30.5 Captions: The captions and headings at the beginning of each section of this Agreement are for convenience only and are to be given no weight in construing the provisions of this Agreement.
- 30.6 Confidentiality: Subcontractor shall keep the financial terms and provisions of this Agreement strictly confidential and shall not in any manner disclose, communicate or furnish to anyone or any other entity any copies of this Agreement or any of the financial terms referred to herein without the express written consent of Contractor, which consent may be granted or withheld in Contractor's sole discretion.
- 30.7 Venue, Construction and Waiver of Jury Trial: This Agreement shall be governed by and construed pursuant to the laws of the jurisdiction wherein the Project is located, unless a more convenient location is otherwise mutually agreed upon. To the fullest extent permitted by law, jury trial is waived by all Parties hereto.

31. **ENTIRE AGREEMENT**

- 31.1 Entire Agreement: This Agreement and the documents designated herein constitute the entire agreement between Contractor and Subcontractor with respect to the subject matter of this Agreement and cannot be amended, modified, or changed except in writing, executed by Contractor and Subcontractor. This Agreement shall supersede any and all other agreements, representations, earlier proposals, bids and quotations, between Contractor and Subcontractor, either written or verbal with respect to the subject matter hereof.
- 31.2 Approval by Owner: This Agreement is binding, subject to approval of Subcontractor by Owner.
- 31.3 Heirs, Severability and Waiver: This Agreement shall be binding upon and inure to the benefit of each Party and their respective heirs, successors and assigns. The partial or complete invalidity of one or more provisions or portions of the Contract Documents shall not affect the validity or continuing force and effect of any other provision or portion thereof. The failure of Contractor, in any one or more instances, to insist upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right granted herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right.

Exhibit A

Insurance Requirements

Exhibit A, Insurance Requirements, is attached to, incorporated into and forms part of the Contract/Agreement.

Subcontractor/Service Provider/Entity (hereinafter referred to as “You” and/or “Your”) shall procure prior to the start of any Work and, at all times thereafter, maintain insurance to protect and defend You and Your employees, the entity with which You are contracting (hereinafter referred to as “Company”), the Project Owner and others required by the Prime Contract, against liability arising out of or resulting from alleged or actual injury or death of persons, damage to property, or other loss arising out of or resulting from Your Work, or the Work of subcontractors that You hire on Your behalf, in connection with the performance of Your Work in at least the following amounts:

Workers’ Compensation & Employer’s Liability Insurance

Workers’ Compensation insurance as required by the State in which Work takes place and Employer’s Liability insurance with limits of \$1,000,000 per accident/\$1,000,000 each employee disease/\$1,000,000 in the aggregate. Include the USL&H and Maritime/Jones Act endorsements as applicable and the Voluntary Compensation Endorsement.

Workers’ Compensation coverage is required for any individual working for You regardless of exemptions that may be available to certain classes of individuals (i.e. sole proprietors, owner/operators) under any State laws. For Illinois Work, You shall, by policy endorsement, waive the Kotecki Cap.

Commercial General Liability Insurance

Commercial General Liability insurance on ISO Form CG 0001 10/01 or equivalent (with no exclusion for XCU or action over claims) providing coverage for liability arising out of or resulting from premises, operations, blanket contractual including coverage for the indemnification clause in this document, independent contractors, products and completed operations (for a period equal to the applicable Statute of Repose) and personal injury and advertising injury. Aggregate limits shall apply on a per project basis utilizing ISO endorsement form CG2503 or equivalent.

On-site Service Providers, Material Suppliers and Truckers:

\$1,000,000 per occurrence, \$2,000,000 products and completed operations
\$2,000,000 annual general aggregate

Subcontractors (not otherwise classified):

\$2,000,000 per occurrence, \$2,000,000 products and completed operations
\$2,000,000 annual general aggregate

Demolition, Crane Operations & Rigging, Heavy Construction, Electrical, Crushing, Washing or Blasting:

\$3,000,000 per occurrence, \$3,000,000 products and completed operations
\$3,000,000 annual general aggregate.

Traffic Control Subcontractors:

\$5,000,000 per occurrence, \$5,000,000 products and completed operations
\$5,000,000 annual general aggregate

Automobile Liability Insurance

Automobile Liability insurance as specified by ISO form number CA 0001 Symbol 1 (any auto) with the following limits based on Your exposures and Work location:

Standard Passenger Vehicles:

\$1,000,000 Combined Single Limit per accident for bodily injury and property damage.

MN Subcontractors and MI Subcontractors & Truckers:

\$2,000,000 Combined Single Limit per accident for bodily injury and property damage.

Trucking Operations (including but not limited to transport of Asphalt, Aggregates, Ready-Mix, Liquid Asphalt, Fuel, and Heavy Equipment):

\$3,000,000 Combined Single Limit per accident for bodily injury and property damage. If You are hauling any potential pollutants You must certify \$1,000,000 per occurrence and annual aggregate utilizing the MCS 90 and CA 9948 or equivalent to cover risk of loss from any potential pollutant at any location during loading, unloading and in transit.

Motor Truck Cargo Insurance

When hauling Company owned or rented equipment, You must carry Motor Truck Cargo insurance with limits at least equal to the value of the equipment You are hauling.

Environmental/Pollution Liability Insurance

Where applicable to Work being provided, You shall procure insurance with limits of at least \$1,000,000 per occurrence and annual aggregate to cover claims of bodily injury, property damage and clean-up including any related defense costs due to environmental exposure including, but not limited to, on site, off site, loading, unloading, disposal or in transit.

Professional Liability Insurance

If You are providing professional services (including but not limited to design, engineering, surveying, or consulting), You shall provide and maintain for 5 years following completion of Work, an appropriate Professional Error & Omissions insurance policy with limits of at least \$1,000,000 per claim and annual aggregate.

Marine Liability Insurance

Where a marine liability exposure exists, Marine General Liability insurance and Protection & Indemnity Liability insurance is required for claims arising from all leased, owned, non-owned and hired watercraft, including coverage for injuries to crew and contractual liability with limits of \$2,000,000 per occurrence and annual aggregate.

Aircraft Liability Insurance

If you are hiring, using, operating or maintaining manned or unmanned aircraft (drones) in connection with the Work or at or adjacent to the site, you shall provide Aircraft Liability insurance for leased, owned, non-owned and hired aircraft with limits of \$2,000,000 per occurrence and annual aggregate. Coverage for third-party bodily injury, property damage and personal injury including breach of privacy shall be included. .

Umbrella-Excess Liability Insurance

General Liability, Auto Liability and Employer Liability limits may be provided through a combination of the underlying policy and Umbrella-Excess insurance. Umbrella-Excess policies must be as broad as underlying policies and follow form on coverage and with respect to additional insured provisions. The Umbrella-Excess policy shall not require the exhaustion of the underlying limits on policies other than Your underlying policies.

Additional Insured Endorsements

Company, any Project Owner, and any others required by the Prime Contract, their subsidiaries, officials and employees, are to be covered as Additional Insureds on Your General, Auto, Environmental and Umbrella-Excess Liability policies using ISO forms CG 2010 (10/01) and CG 2037 (10/01) or equivalent, for any liability arising out of or resulting from Work performed by You or on Your behalf; Your products and Your completed operations; premises owned, occupied or used by You, or automobiles owned, leased, hired or borrowed by You (CA 2048 or equivalent). You will provide copies of the Additional Insured endorsements with Your Certificate of Insurance. Additional Insured coverage will apply to the fullest extent permitted by applicable law.

Primary & Non-Contributory Insurance

For any claims related to Your Work, Your insurance coverage, as required by Exhibit A, shall be primary insurance as respects Company, Project Owner, and any others required by the Prime Contract, their subsidiaries, officials and employees. Your Umbrella-Excess liability policies must clearly provide primary Additional Insured status for all Additional Insureds. Any insurance or self-insurance maintained by Company, its subsidiaries, officials and employees shall be excess of Your insurance policies and shall not contribute with Your insurance. Any subcontractors hired by You shall also afford the above insurance coverage to Company, Project Owner, and any others required by the Prime Contract.

Waivers of Subrogation

You shall provide by policy endorsement, a waiver of subrogation in favor of Company, Project Owner, and any others required by the Prime Contract on Your Workers' Compensation, General Liability, Environmental Liability, Auto Liability and Umbrella-Excess policies.

Policy Form, Certificates of Insurance and Licenses

All insurance policies required by Exhibit A shall be maintained with insurance companies licensed and admitted to do business in the state in which the project is located and have a rating of A-VII or higher in the current Best's Key Rating Guide. You agree to furnish to Company, Project Owner, and any others required by the Prime Contract, Certificates of Insurance showing compliance with Exhibit A. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance. You further agree to have all policies endorsed to notify Company, Project Owner, and any others required by the Prime Contract thirty (30) days in advance of any cancellation or change to the insurance coverages shown on the certificate.

Adequacy of Insurance Coverage

Neither Company nor Project Owner warrant the adequacy of the types of insurance or the limits required. The insurance requirements, including the limits required for Additional Insured coverage, do not limit Your legal responsibilities and liabilities. If the insurance requirements specified by Project Owner in the Prime Contract are greater than what is required in this Exhibit A, You are bound by those greater requirements and shall immediately obtain the required coverage and limits. Company has no duty to You or to any of Your insurers or their insurance agents to review any Certificates of Insurance or copies of other insurance documents furnished to Company to determine whether Your insurance complies with the insurance requirements of the Contract/Agreement. Failure of Company to detect that You have not submitted Certificates of Insurance or proper Certificates of Insurance, or are otherwise not in compliance with the insurance-related provisions of the Contract/Agreement shall not be considered a waiver or other impairment of any of Company's rights, and shall not in any way limit or relieve You of Your obligations to maintain the insurance required in the Contract/Agreement. You bear the sole responsibility for ensuring Your insurance meets the requirements of the Contract/Agreement.