



Subcontract

Performance Services, Inc.
9779 South Franklin Drive, Suite 104,
Franklin, Wisconsin 53132
Office: (414) 223-5752
Fax: (414) 347-7877

Subcontract No.: _____

This SUBCONTRACT is made as of the _____ day of _____ 20__, by and between **Performance Services, Inc.** (“Contractor”) and _____ (“Subcontractor”), concerning the following:

Contractor	Subcontractor
Performance Services, Inc. 9779 South Franklin Drive, Suite 104, Franklin, Wisconsin 53132	
Owner	Architect/Engineer
Project Description	Project Location

RETAINAGE under this Subcontract shall be _____ Percent (_____%)

BONDS (see Article 5 below) Are Are not required as a condition of this Subcontract.

SUBCONTRACT WORK:

A. Scope

1. Provide all labor, material, supervision, services, supplies, equipment, storage and rigging as required to complete the _____ scope of work as described in the Contract Documents for the above-referenced Project.
2. Scope to include:

(a more detailed description may be set forth in attached Exhibit "A")(If Subcontractor is performing Design-Builder Services, such scope of work also will include the work and services set forth in Exhibit “F” Design/Build Subcontractor Design Services, and Subcontractor will be bound by and is required to comply with the terms and conditions set forth in Exhibit “F”):



Subcontract

B. Exhibits:

- Exhibit "A" Scope of Work/List of Contract Documents and Drawings
- Exhibit "B" Subcontractor Application for Payment
- Exhibit "C" Subcontractor Affidavit, Partial Waiver and Release of Lien
- Exhibit "D" Subcontractor, Affidavit, Final Waiver and Release of Lien
- Exhibit "E" Project Construction Schedule
- Exhibit "F" Design Build Subcontractor Design Services
- Exhibit "G" Subcontractor Warranty

SUBCONTRACT PRICE: -----**Dollars (\$\$\$\$0.00)**

PROJECT COMPLETION: The entire scope of this agreement shall be completed by the _____ day of _____ 201__ and shall be completed in accordance with the deadlines and milestones set forth in the Project Construction Schedule.

Performance Services, Inc. and Subcontractor agree to the terms above and as set forth below in the following Articles I through 13 on pages 3 through 18 hereof and in the Attachments attached hereto, all of which are a material part of this Subcontract. This Subcontract is not valid unless signed by Performance Services, Inc. and shall become effective on the date first above written notwithstanding different dates of execution hereof.

Performance Services, Inc.
Signed: _____
Name: R. Scott Morris
Title: V.P. Operations Date: _____

Company Name: _____
Signed: _____
Name: _____
Title: _____ Date: _____

TERMS AND CONDITIONS

ARTICLE 1 THE CONTRACT DOCUMENTS

1.1 The Contract Documents which shall govern this Subcontract and the Subcontract Work (referred to herein as the "Work" consist of (1) this Subcontract and the Exhibits listed or referred to herein; (2) the Agreement between the Owner and Contractor and the Contract Documents enumerated therein, including any General Conditions, Supplementary Conditions, Drawings, Plans, Specifications, Project Manual, Project Criteria, Schedules, and Addenda (collectively referred to as the "Design Build/General Contract/Prime Contract"); and (3) Modifications to this Subcontract issued after execution of this Agreement. A list of the Contract Documents and Drawings is attached hereto as Exhibit "A". These form the Subcontract, and are as fully a part of this Subcontract as if repeated herein. The term "Contractor" shall be used to refer to Performance Services, Inc. ("PSI") whether PSI is acting as a Design Builder, General Contractor or Prime Contractor. Further, the terms "Contractor" and "PSI" shall mean one and the same.

1.2 Subcontractor agrees to be bound to Contractor by all of the terms of the Contract Documents and, with respect to the Work, to assume toward Contractor all of the obligations and responsibilities that Contractor by those instruments assumes toward Owner or other third parties. Subcontractor further agrees that Contractor shall, in addition to other rights and remedies provided by the Subcontract, have the same rights and remedies against Subcontractor that Owner or any other third party has against Contractor under the Contract Documents. In the event that Subcontractor has performed any of the Work prior to the date of this Subcontract, pursuant to authorizations to proceed, letters of intent or otherwise, this Subcontract and the Contract Documents shall govern such prior Work to the same extent as though such Work was performed after the date hereof.

1.3 Subcontractor has examined the Contract Documents, acknowledges the Contract Documents to be suitable for Subcontractor's Work and sufficient for their intended purpose, and agrees to perform its Work and complete the same in full and strict accordance therewith and to the entire satisfaction of Contractor and Owner, and agrees that it will perform its Work so as not to violate any term, covenant or condition of the Design Build/General Contract/Prime Contract. Subcontractor has the affirmative duty to carefully study and compare the Contract Documents and to notify Contractor, in writing, of any error, inconsistency, omission or ambiguity prior to commencing the Work. Subcontractor shall be liable for any increased costs or damage resulting from its performance of any Work involving an error, inconsistency, omission or ambiguity in the Contract Documents that it has not so reported to Contractor.

1.4 All Drawings, Specifications and other items defined herein as Contract Documents that have been prepared for the Project and furnished to Contractor by or on behalf of Owner or other third party are without any representation or warranty by Contractor as to

the acceptability, accuracy or suitability thereof for the Work and Subcontractor accepts all risks with respect to any and all defects, deficiencies, errors and omissions therein. Contractor makes no representation or warranty to Subcontractor concerning the acceptability, accuracy or completeness of the Contract Documents or other information and data prepared by persons other than Contractor, and accordingly, Contractor shall have no liability to Subcontractor with respect to any patent or latent defects, deficiencies, errors and omissions therein. Subcontractor acknowledges that it has had an adequate opportunity to review and/or obtain copies of all existing Contract Documents and, in any case, it shall not be excused from any provisions therein due to any lack of knowledge or understanding of the existence or contents thereof at the time of executing this Subcontract.

1.5 Subcontractor shall not subcontract with sub-subcontractors or material suppliers for performance of any portion of the Work required hereunder without Subcontractor obtaining the prior, written consent of Contractor to such sub-subcontractor or material supplier, in accordance with the provisions of Paragraph 12.6 hereof. It is expressly understood and agreed that as a precondition for any such consent by Contractor such sub-subcontract or material purchase order agreement shall be subject to the Contract Documents and such sub-subcontractor or material supplier shall be bound to the Contract Documents with respect to all obligations, duties, risks, procedures, requirements and responsibilities set forth herein that apply to Subcontractor, including but not limited to claim and dispute resolution procedures, notice requirements and remedies. Moreover, regardless of the existence of any sub-subcontract or material purchase order agreement, Subcontractor shall remain fully liable and responsible to Contractor for the performance of all obligations, duties, risks, procedures, requirements and responsibilities under the Subcontract the same as if no such sub-subcontract or material supply agreement exists.

1.6 Subcontractor shall perform no portion of the Work at any time without the Contract Documents and, where required, approved Shop Drawings, Product Data, Samples or other approved submissions. Contractor, Owner and Architect may render interpretations and decisions concerning the proper execution or progress of the Work, and any such interpretation, if given in good faith and made in reference to one or more terms or provisions of the Contract Documents, shall resolve and take precedence over any ambiguity or other inconsistency within, between or among the Contract Documents.

1.7 Subcontractor shall keep at the Project site, for Contractor's ready reference, one up-to-date copy of the Contract Documents, in good order and marked currently to record all changes made during construction.

1.8 The minimum quality and fitness of products and workmanship shall be based on the requirements that all Work shall conform with the quality levels established by the Contract Documents and any decisions as to the acceptability of products or workmanship shall rest with Contractor and such other parties as provided by the Contract Documents. What is or has been usual or



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ARTICLE 2 THE WORK

customary in a given trade or on other projects shall not limit, qualify or reduce the standards of quality, fitness and/or performance of products and workmanship established by or inferable from the Contract Documents.

1.9 The Contract Documents shall be deemed to include and require all items and aspects of labor, material, equipment, services and transportation incidental to or necessary for the proper and efficient execution and completion of the Work as it relates to the Project. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not specifically covered in the Contract Documents or which is subject to question and interpretation because of conflicts, duplications or ambiguities may, at Contractor's option, be required of Subcontractor if it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the results intended by this Subcontract. As such, any part of the Work shown on Drawings but not specifically mentioned in the Specifications or vice versa shall be considered as part of the Work, the same as though included in both.

1.10 Subcontractor shall submit five (5) sets of all required shop drawings, product data or catalog cut sheets, samples and other submittal requirements manuals ("Submittals") immediately as required so as to allow Contractor to meet any of its submittal and performance deadlines under the Contract which require timely submittal and approval of Subcontractor's Submittals. Likewise, any and all test reports, certificates of compliance, warranties, guarantees, or the like, required of Subcontractor under the Subcontract shall be furnished to Contractor at no additional cost and in a timely manner so as to allow Contractor to meet any submittal and performance deadlines of its own under the Contract. No attempted variance or modification from the requirements of the Contract Documents, disclaimer of warranty or limitation of liability hereunder by Subcontractor shall be effective or enforceable as against Contractor or any other party without Contractor's express, separate written acceptance and agreement to such disclaimer or limitation.

1.12 This Subcontract and the other Contract Documents shall be read to complement each other. In the event of an irreconcilable conflict within or between the terms thereof, the term(s) which give greater rights to the Contractor or describe the Work hereunder in more qualitative or quantitative respects shall govern, at the option of Contractor, without regard to the party or person who drafted the instrument containing such term.

1.13 This Subcontract and the Contract Documents contain the entire integrated agreement between the parties. Any executory agreement hereafter made shall be ineffective to change, modify or discharge this Subcontract in whole or in part, unless such executory agreement is in writing and signed by both Contractor and Subcontractor. All verbal or written negotiations, agreements and representations made or conducted by or between either party prior to the date of this Subcontract are hereby voided and shall not serve to supplement, vary or contradict the terms hereof.

2.1 The Work to be performed by Subcontractor is described generally in the introductory section of this Subcontract above entitled "SUBCONTRACT WORK", and shall be subject to such additional detailed descriptions as may be set forth in Exhibit "A" or Exhibit "F" attached hereto or elsewhere in the Contract Documents. The Work shall consist of performing all work and furnishing all materials, machinery, equipment, supplies, supervision, services, storage and rigging required for or incidental to the completion of such Work in strict accordance and conformity with and as more fully described in the Contract Documents. Subcontractor agrees that it will so perform its Work so as not to violate any term, covenant or condition of Contractor's Design Build/ General Contract/Prime Contract.

2.2 Subcontractor represents that it has investigated the Project site and satisfied itself as to all conditions, circumstances, uncertainties and risks that may affect the performance of its Work or influence the cost thereof. Subcontractor acknowledges that it has satisfied itself as to the character, quality and quantity of existing conditions and obstacles which may be encountered. Contractor shall have no responsibility to Subcontractor as a result of any actual encountered conditions, circumstances, uncertainties and risks being different from those contemplated, assumed, inferred or foreseen by Subcontractor. If, as a result of Subcontractor's site investigation, it determines the need for further investigation into hidden or subsurface conditions, then Subcontractor shall be responsible for scheduling and undertaking such further investigation, on its own time and at its own cost.

2.3 Subcontractor represents that it is familiar with the work practices and requirements for the Subcontractor's Scope of Work that are routinely performed in the Project locale. It is expected that Subcontractor is aware of these common practices and procedures and of the Project locale inspectors' interpretations of codes, ordinances and specifications, and will perform its Work so as to comply with such applicable codes, ordinances and specifications.

2.4 Subcontractor shall coordinate, schedule and perform its Work to insure that it is accomplished as an integrated whole with the work of Contractor and all other subcontractors and contractors, with no items necessary to make it so excluded from the Work. Any labor, materials, equipment, machinery, supervision or services necessary to accomplish such integration shall be undertaken by Subcontractor as part of the Work and at no additional cost to Contractor notwithstanding the omission thereof from any drawing or other Contract Document.

2.5 All of Subcontractor's workmanship, materials, submissions, and samples shall be subject to the approval of Owner, Contractor and Architect but such approval, if and when given, shall neither relieve Subcontractor of its obligations hereunder nor mitigate its liability to Contractor for failure to perform in accordance with the Contract Documents.

**ARTICLE 3
COMMENCEMENT AND COMPLETION**

3.1 Subcontractor shall commence the Work immediately when and as directed by Contractor and diligently and continuously prosecute and coordinate such Work with such workers, materials, equipment and supervision to insure that Contractor, other subcontractors and third parties will not be delayed, interrupted, hindered or disrupted by Subcontractor's activities or operations, and to insure completion of the Project within the time specified by any construction schedule dates and/or milestones now or hereafter established in accordance with this Subcontract or other Contract Documents, including specifically any dates and/or milestones set forth in any Project Construction Schedule as described hereinafter. Such schedule dates and/or milestones shall be adjusted as required as the Project proceeds but the deadline for completion of Subcontractor's Work shall not be extended without Contractor's written consent.

3.2 Time is of the essence of this Subcontract and any breach of same shall go to the essence thereof. Subcontractor, in agreeing to complete the Work within the times and sequences herein mentioned, has taken into consideration and made allowances for all hindrances, delays and adverse working conditions which are or may be incident to its Work. Subcontractor acknowledges and agrees that the times allotted by the Subcontract for the performance and completion of the Work are reasonable and take into account the risks and adverse conditions assumed by Subcontractor hereunder.

3.3 To foster the expeditious and efficient construction of the Project, a Project Construction Schedule may be developed by Contractor or other third parties to schedule and coordinate the times required for one of more areas, phases or types of work on the Project. The Project Construction Schedule, if any, may be attached hereto as Exhibit "E". Subcontractor shall participate and cooperate in scheduling the times and sequences required in Subcontractor's area of Work and shall perform such Work in accordance with the Project Construction Schedule and all revisions thereto. Subcontractor shall continuously monitor the construction schedule and advise Contractor on a regular basis of the status of Subcontractor's progress with respect to such schedule at any time Contractor requests Subcontractor to do so, including the furnishing of information on the status of shop drawings, samples, submittals and materials, machinery or equipment which may be in the course of preparation of manufacture.

3.4 Subcontractor shall maintain and designate to Contractor adequate, experienced and cooperative supervisory personnel, including a full-time on-site project manager or superintendent, or other supervisory personnel acceptable to Contractor, at all times during performance of the Work. Subcontractor's on-site project manager or superintendent shall be duly authorized to act for and on behalf of Subcontractor in all matters relating to the Project and the Work, and shall attend all meetings scheduled by Contractor or other third parties for the purpose of scheduling and coordinating activities on this Project, and such representative attending any such meeting shall be conclusively deemed to have the authority to bind Subcontractor during the course thereof.

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3.5 Subcontractor shall prepare and submit periodic work reports and other documentation as Contractor may require for the Project. Subcontractor's on-site project manager or superintendent shall report in writing to Contractor's Project Manager or other designated representative when a delay, interference, disruption or hindrance in the Work occurs as well as when the Work resumes after a delay, interference, disruption or hindrance, in order to advise Contractor of the progress of the Work. Subcontractor also shall immediately notify Contractor of any circumstance which may affect the times and sequences in the schedule, and shall submit all notices, claims and requests for extensions of time in writing to Contractor sufficiently in advance to allow Contractor to forward such requests as required by and in compliance with the procedures and time limitations as set forth in the Contract Documents; but in no event shall such request be submitted later than ten (10) days after the commencement of the delay or other event giving rise to the notice; otherwise Subcontractor shall not be granted an extension of time or other relief and any right to such extension or other relief otherwise given to Subcontractor by the Contract Documents shall be deemed waived.

3.6 Subcontractor is behind schedule in its Work or is failing, without cause, to maintain progress of its Work to conform to the general progress of all work for the Project, or is otherwise failing to meet Project Construction Schedule deadlines and milestone dates, Subcontractor shall, at its own expense, perform any overtime work, use extra labor, and undertake all other means necessary to bring its Work back on schedule. If at any time Subcontractor refuses or neglects to supply adequate and competent supervision, or a sufficiency of properly skilled workmen or of materials or equipment of the proper quality or quantity, or fails in any respect to prosecute the Work with promptness and diligence or fails to perform or fulfill any other obligations provided by the Contract Documents, or otherwise delays the work of Contractor, other subcontractors or third parties, Contractor may upon giving forty-eight (48) hours written notice to Subcontractor, without prejudice to any other remedy Contractor may have, provide any such labor or materials and take such other steps as Contractor may, in its discretion, deem advisable, necessary or expedient to correct or otherwise address such refusal, neglect or failure. Contractor may deduct the cost thereof from any money due or thereafter to become due from Contractor to Subcontractor, which costs shall include a reasonable allowance for Contractor's overhead and profit. In the event of any such refusal, neglect or failure by Subcontractor, Contractor shall also be at liberty to terminate the employment of Subcontractor for default as provided by Article 11 of this Subcontract.

3.7 It is acknowledged that Subcontractor's failure to achieve substantial completion of the Work within the Contract Time or to otherwise fully perform its Subcontract obligations will cause Contractor to incur substantial economic damages and losses arising out of and attributable to Subcontractor, including liquidated damages that may be assessed and recovered by Owner from Contractor and its Surety without Owner being required to present any evidence of the amount or character of actual damages sustained by reason thereof. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. If Subcontractor is responsible for any delay in the prosecution or completion of any Work or causes a disruption of any time, sequence or scheduled work activity of Contractor, Owner, other subcontractors or third parties,

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Subcontractor shall pay Contractor for all costs and damages suffered by Contractor as a result of such delay or disruption including, without limitation, any actual or liquidated damages assessed against Contractor by the Owner. In the event that any such delay or disruption is caused by the acts, omissions or neglect of Subcontractor and the concurrent acts, omissions or neglect of Contractor, other subcontractors or third parties, Subcontractor agrees to pay Contractor a proportionate share of damages suffered, incurred by or assessed against Contractor, including assessed liquidated damages, as allocated by Contractor, in good faith, between and among Subcontractor and other responsible parties. Such sums may be deducted by Contractor from any unpaid portion of the Subcontract Amount, and without limiting the option of Contractor to terminate this Subcontract for default as herein elsewhere provided.

3.8 In the event Subcontractor's performance of the Work is delayed, suspended, hindered or disrupted for any period of time by individual or cumulative acts or omissions of or interference by Owner, Contractor, Architect, other subcontractors or third parties or due to fire or other casualty, or on account of riots or of strikes, or other combined action of workmen or others, or on account of any acts of God, or any other cause whether or not within the Owner's or Contractor's control, Subcontractor may request an extension of time for performance of the Work; provided, that the extension of time granted to Subcontractor shall not under any circumstances exceed the extension of time granted to Contractor thereof. The right to such time extension shall be Subcontractor's sole and exclusive remedy and accordingly, Subcontractor shall not be entitled to claim or recover any increase in the Subcontract Amount or damages or additional compensation of any type whatsoever as a consequence of any such delays, suspensions, hindrances or disturbances, whether or not contemplated by the parties and regardless of the severity or duration thereof. Subcontractor hereby assumes the risk of all suspensions of, delays in, or hindrances to the performance of the Work, regardless of the length thereof, arising from any and all causes whatsoever, including, without limitation, those causes listed above or on account of any circumstances caused or contributed to by Subcontractor.

3.9 Contractor may schedule and direct Subcontractor to perform additional overtime work not due to Subcontractor's acts, omissions or delays, in which case Contractor shall pay the cost of the premium time only, without overhead or profit. Contractor also shall pay the actual expense, without overhead or profit, of any additional rental charge for overtime use of machinery or equipment leased to Subcontractor or its subcontractors, but Subcontractor shall bear at its own expense any additional expense for overtime use of machinery or equipment owned by Subcontractor or its subcontractors. Subcontractor's books shall be kept in a manner facilitating Contractor's audit of such adjustments. Subcontractor agrees to accept such payments in complete settlement of any and all claims for damages, loss, cost or expense caused by or in any way related to overtime conditions or directives.

3.10 Subcontractor shall, as directed by Contractor and without adjustment in the Subcontract Amount or Time, cease work at any point and transfer Subcontractor's personnel, machinery and equipment to such points and execute such portions of the Work in preference to other portions as Contractor may prescribe.

Subcontractor shall have no claims for damages or extra costs due to such directions.

3.11 Contractor is not obligated to notify Subcontractor when to begin, cease or resume work, or to superintend the Work so as to relieve Subcontractor of responsibility for any consequence of neglect or carelessness by him or his subordinates. All materials, equipment, labor and supervision shall be furnished at such time as shall be for the best interests of the Contractor and all subcontractors concerned to the end that the combined work of all may be properly and fully completed in accordance with scheduling and coordination requirements for the Project.

3.12 Contractor shall not be liable to Subcontractor, its materialmen, laborers or subcontractors for any damages, loss or expenses sustained by any of them resulting from acts or omissions (whether or not negligent), failure to perform, delays in performance or defaults of another subcontractor, materialman or supplier of services in connection with the performance of any of the work covered by the Design Build/General Contract/Prime Contract. Subcontractor agrees to pay (and to protect and indemnify Contractor against any liability for) any damages sustained by another subcontractor, materialman or other party supplying labor, materials and /or services in the performance of the work covered by the Design Build/General Contract/Prime Contract resulting from Subcontractor's acts or omissions (whether or not negligent), failure to perform, delays in performance or default in the performance of the Work to be done under the Subcontract.

ARTICLE 4 PAYMENT

4.1 As full consideration for complete and timely performance of the Work and for all obligations and conditions undertaken and risks assumed by Subcontractor in connection therewith, Subcontractor shall be paid the Subcontract Amount stated in the introductory section of this Subcontract. The Subcontract Amount shall be the total sum paid to Subcontractor, except as may be amended by Change Order as provided herein.

The Subcontract Amount for the Work is a firm, Lump Sum or Guaranteed Maximum Price amount. The Subcontract Amount includes, and Subcontractor shall be responsible for the prompt payment of, all charges and costs imposed, incurred or payable for the materials, machinery, equipment and labor used in or furnished in connection with the performance of the Work, including, but not limited to, the cost of materials, rental costs on machinery and equipment, wages, fringe benefits, employee taxes and any other labor burden expenses on labor, charges for all utility services, including water and power, as well as any and all local, state and federal taxes, including sales taxes, use taxes and personal property taxes, customs, duties and tariffs, applicable permits, licenses, transportation, freight and insurance. Subcontractor shall pay and bear the risk of any increase in such materials, machinery, equipment and labor costs, charges, taxes, customs, duties, tariffs, permits, licenses, transportation, freight and insurance charges and any other charges or costs imposed or payable for the materials, machinery, equipment and labor used in or furnished in connection with the performance of the Work. Where the law requires any tax to be stated and charged separately, the total of all items included within the



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Work and any taxes thereon shall not exceed the Subcontract Amount stated herein. Subcontractor shall furnish evidence, when requested or required by Contractor, establishing that all of such payments required to be made by Subcontractor have, in fact, been made.

4.3 The Subcontract Amount includes all allowances stated in the Contract Documents for Subcontractor's Work, if any. Items covered by these allowances shall be supplied for such amounts and by such persons as the Contractor may direct. Unless otherwise provided in the Contract Documents, allowances shall cover the cost to Subcontractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes. Allowances do not cover Subcontractor's costs for unloading and handling on the site, labor, installation, overhead, profit and other expenses associated with items covered by the allowances; rather, such costs are included in the Subcontract Amount and no additional compensation shall be paid to Subcontractor therefor. Whenever the actual cost of the materials and equipment delivered at the Site is less than the allowance, the Subcontract Amount shall be adjusted accordingly by Change Order.

4.4 Payment of the Subcontract Amount by Contractor to Subcontractor shall only be for actual work performed to the satisfaction of Contractor, Owner and Architect less the retainage provided for herein, or such higher percent retainage as Owner may withhold from Contractor under the Design Build/General Contract, which Contractor may withhold from payments due Subcontractor.

4.5 Subcontractor shall, within twenty (20) days after execution of this Subcontract and before the first application for Progress Payment, submit to Contractor a Schedule of Values of the various parts of the Work aggregating the total sum of this Subcontract made out in such detail and subdivided into such categories as Contractor may prescribe or the Contract Documents may require, and supported by such evidence as to its correctness as Contractor may direct. The Schedule of Values, as approved by Contractor, shall be used as a basis for applications for payments, unless later found by Contractor to be in error. Within such twenty (20) day period Subcontractor shall also furnish Contractor with Subcontractor's document numbers for applicable business tax licenses or sales tax permits and, if requested by Contractor, a verified list of the subcontractors and material suppliers intended to be used by Subcontractor for any part of the Work on such a form as Contractor may prescribe.

4.6 Subject to the conditions for payment provided by this Subcontract and other Contract Documents and provided Subcontractor is not in breach of this Subcontract, Progress Payments will be made to Subcontractor on a monthly basis for Work performed through the preceding month. The amount of an interim or final payment to Subcontractor shall not exceed the value of labor and materials incorporated by Subcontractor in the Work as of the date of the application for payment, less retainage thereon to be withheld therefrom as provided in the introductory section hereof, and less the aggregate of previous pay applications together with all charges for services, materials, equipment and other items furnished by Contractor or chargeable to Subcontractor. Furthermore, the amount of a payment shall not exceed the percentage of completion

allowed to Contractor by Owner for the Work of Subcontractor, less the retainage specified herein. Contractor reserves the right to advance the date of any payment, including final payment, if in its sole judgment it becomes desirable to do so.

4.7 Subcontract shall complete and furnish to Contractor a Subcontractor's Application for Payment in the form of Exhibit "B" attached hereto. Subcontractor shall submit all applications for payments in triplicate, with sufficient breakdown data to permit checking and approval, and upon forms and with accompanying documentation acceptable to Contractor. With each application for payment, Subcontractor shall furnish an updated Schedule of Values, and waivers of lien, which for progress payments shall be in the form of Exhibit "C" Subcontractor Affidavit, Partial Waiver, and Release of Lien ("Partial Waiver") and for final payment in the form of Exhibit "D" Subcontractor Affidavit, Final Waiver, and Release of Lien ("Final Waiver"), each which are attached hereto. Subcontractor's application shall be submitted on or before the 20th day of each month, or sufficiently in advance to permit Contractor to include each such application, as approved, in Contractor's applications for payment, or by such other deadlines as Contractor may prescribe. If more restrictive payment terms and conditions are set forth in the Design-Build/General Contract/Prime Contract, Contractor shall have the option of having those terms and conditions control all progress payments from Contractor to Subcontractor.

4.8 Payments shall not become due to Subcontractor unless and until Contractor receives payment for such Work from Owner and the amount due shall not exceed the amount actually received by Contractor as applicable to Subcontractor's Work; otherwise the time when such payments shall be due Subcontractor shall be postponed until Contractor has received same from Owner. Such receipt of payment by Contractor is intended as a condition precedent to Contractor's duty to pay Subcontractor and Subcontractor accepts such risk. Once such payment has been received by Contractor for Subcontractor's Work, Contractor shall submit to Subcontractor within seven (7) days thereafter the amount approved as due, less any adjustments for amounts to be withheld or set-off by Contractor pursuant to the terms and conditions of the Contract. Subcontractor expressly contemplates that payments to it are contingent upon Contractor receiving payment from Owner, and Subcontractor expressly agrees to accept the risk that it will not be paid for work performed by it in the event that Contractor, for whatever reason, is not paid by Owner for such work. Subcontractor relies primarily for payment for work performed on the credit and ability of Owner, and not Contractor, and Subcontractor agrees that payment by Owner to Contractor for work performed by Subcontractor shall be a condition precedent to any payment obligation of Contractor to Subcontractor.

4.9 Where the Contract Documents permit payment to include the value of materials, machinery or equipment not incorporated into the Work, but delivered and suitably stored on or off the site of the Project, Contractor shall have discretion either to approve or disapprove payments for such materials, and Subcontractor shall, in addition to the other requisites of the Contract Documents, make any provisions necessary, including insurance covering loss or damage to the material, to ensure and protect Contractor's or Owner's title and right of possession and access to any such materials for which payment is approved by Contractor.

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4.10 Subcontractor shall pay for all materials, machinery, equipment and labor used in, or in connection with, the performance of this Subcontract through the period covered by previous payments received from Contractor, and no interim or final payments shall become due until Subcontractor has furnished its updated and revised Schedule of Values, its Partial Waiver and/or Final Waiver, and any other affidavits, waivers, releases, certificates, or other evidence that the Contractor requires, in substance and form satisfactory to Contractor, to establish Subcontractor's payment to or discharge of claims and liens in respect of such materials, machinery, equipment and labor, and any other documents or evidence required by the Contract Documents in a form acceptable to Contractor. Such receipts and/or evidence shall be a condition precedent to any right or claim Subcontractor may have for payment for any work done under the Subcontract. Contractor may require that Subcontractor's payment obligations shall extend through and include the period covered by the current application for Progress Payment upon the existence of any cause or grounds for withholding of payments, as provided in Paragraph 4.12 or elsewhere in the Contract Documents. If at any time Contractor, in its sole discretion, determines that Subcontractor's financial condition has become, in Contractor's opinion, unsatisfactory, Subcontractor shall furnish adequate financial security or other equivalent proof of ability to perform, satisfactory to Contractor, within five (5) days after receipt of written notice. Failure to provide the security or proof requested hereunder may be treated by Contractor as a breach or default under Article 11 of this Subcontract.

4.11 Subcontractor agrees that moneys received for the performance of the Work hereunder shall be held in trust for payment for labor and material utilized in performing Subcontractor's Work, and said moneys received in payment by Contractor to Subcontractor shall not be diverted to satisfy any other obligations of Subcontractor on work other than this project and under the Subcontract.

4.12 Should Subcontractor at any time fail to pay for all labor, materials or equipment used by Subcontractor in said Work when due, Contractor may pay for same and charge same to Subcontractor, without Subcontractor's consent. Contractor has the further right to pay any claims for labor, materials and equipment used in the performance of the Work when these claims are not due, providing Subcontractor gives its consent. However, nothing contained in this paragraph shall create any personal liability on the part of Contractor to any subcontractor, material supplier or laborer, or any direct contractual relationship between Contractor and them.

4.13 Payments otherwise due to Subcontractor may be withheld by Contractor upon the existence or reasonable belief of Contractor concerning the existence or probability of (i) uncorrected defective or non-conforming Work, (ii) claims or liens filed or reasonable evidence indicating the probability of the filing of claims, (iii) Subcontractor's failure or neglect to make payments properly due to its sub-subcontractors or for materials, machinery, fuel or labor, or applicable taxes, fees and fringe benefits or (iv) reasonable doubt that the Subcontract can be completed for the balance then unpaid, (v) any other breach of this Subcontract or (vi) any other conditions specified as grounds for such withholding by the Contract Documents. If said causes are not removed, Contractor may, upon written notice, rectify the same at Subcontractor's expense and may

make direct disbursement to unpaid subcontractors, material suppliers and other claimants from payments withheld; the right of Contractor to make such direct payment shall not be construed to create a duty to do so. Contractor also may offset and recoup against any sums due Subcontractor the amount of any liquidated or unliquidated obligations of Subcontractor to Contractor, whether or not arising out of this Subcontract.

4.14 No payment to Subcontractor shall operate as an approval of Subcontractor's Work or material, or any part thereof, or as a release of Subcontractor from any of its obligations under this Subcontract.

4.15 Notwithstanding any other provision for interest in the Design Build/General Contract/Prime Contract or Contract Documents, Contractor shall not pay any interest, finance charges or carrying charges unless or until payment is due and unpaid in accordance with the terms hereof, in which event, provided Subcontractor is not otherwise in breach or default of the terms of the Subcontract, payments shall bear interest, finance charges or carrying charges at the rate of eight percent (8%) per annum from the date payment is otherwise due and owing.

4.16 All payments made Subcontractor prior to the date of this Subcontract for Work performed pursuant to a Letter of Intent or other written or verbal interim authorization given by Contractor, if any, shall be applied against the Subcontract Amount. The remaining unpaid balance of the Subcontract Amount shall be the amount which results from deducting payments made by Contractor for pre-signing work from the Subcontract Amount.

4.17 Final payment of the unpaid balance of the Subcontract Amount shall not become due until 91 days following the date of Substantial Completion as determined under the Contract Documents, and if applicable, not before Architect's issuance of the Certificate for Final Payment covering all of Subcontractor's Work, and not until and unless (i) all Work for the Project is fully completed and performed in accordance with the Contract Documents and is satisfactory to and approved by Owner, Contractor and Architect, (ii) Subcontractor has delivered to Contractor all manuals, "as-built" or record drawing, guarantees, and warranties for material, machinery and equipment furnished by Subcontractor, and testing and/or inspection results or reports, (iii) Subcontractor has delivered to Contractor satisfactory evidence that all labor and material accounts incurred by Subcontractor in connection with his work have been paid in full, (iv) Subcontractor has delivered to Contractor the other submittals as required by Paragraph 4.9, (v) Subcontractor has fulfilled all other requirements which are prescribed by this Subcontract or the Contract Documents to serve as conditions to final payment, and (vi) Contractor has received full and final payment from Owner for such Work, which receipt of payment is a condition precedent to Contractor's duty to pay Subcontractor.

4.18 Acceptance by Subcontractor of any sum tendered by Contractor as final payment shall constitute a waiver of all claims by the Subcontractor with respect to this Subcontract or the Work, except those claims authorized by this Subcontract, previously made in writing and submitted in a timely manner, and specifically identified and reserved by the Subcontractor as unresolved in the application for final payment.

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ARTICLE 5 BONDS AND INSURANCE

5.1 If the introductory section of this Subcontract requires Bonds to be provided as a condition to the Subcontract, Subcontractor shall provide to Contractor, as named obligee, a Payment Bond and a Performance Bond in respective penal sums equal to the Subcontract Amount, on forms and with surety acceptable to Contractor for the faithful performance of the Subcontract, and payment of any and all claims arising by reason of the performance, or non-performance, of the Subcontract. If additional bond requirements are set forth and contained in Contractor's Design Build/General Contract, the bonds furnished hereunder by Subcontractor shall be in strict accordance with and subject to the bond requirements set forth and contained in said Design Build/General Contract. The premium costs incurred for such bonds shall be included in the Subcontract Amount.

5.2 If Bonds are not required as of the date of this Subcontract, Contractor nevertheless, by written notice to Subcontractor at any time before final completion and acceptance of Subcontractor's Work, may require Subcontractor to provide Performance and/or Payment Bonds as described in the preceding Paragraph of this Subcontract, in such penal sums as Contractor may designate which shall not be greater than the value of Work remaining to be performed, completed or corrected as of the date of the notice, including any Subcontractor payment obligations outstanding. If Subcontractor is not then in default under this Subcontract and no cause exists for withholding of payment to Subcontractor pursuant to Paragraph 4.12, the premium costs for such bonds, excluding overhead and profit, will be added to the Subcontract Amount by Change Order; otherwise, such costs shall be paid by Subcontractor without increase in the Subcontract Amount.

5.3 Subcontractor shall have no right to receive any payments under this Subcontract until and unless Payment and Performance Bonds as called for in Paragraphs 5.1 or 5.2 are properly executed and furnished to Contractor, regardless of the status of the Work or performance by Subcontractor.

5.4 Upon entering into the Subcontract, and prior to Subcontractor commencing performance of the Work on the Project under the Subcontract, Subcontractor shall secure and maintain at its own cost, such insurance as will protect it from claims under the worker's compensation laws of the state in which the Work is being performed and also public liability and property damage insurance in such amounts and with such coverage to fulfill Subcontractor's obligations under the Subcontract and the Contract Documents as well as Subcontractor's obligations with regard to the indemnification requirements and any claim, damage, loss or expense described in this Subcontract. Liability insurance shall be carried on an occurrence basis. Contractor, Owner and Architect shall be named as Additional Insureds on all insurance coverages required under the Subcontract except on the worker's compensation policy. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded to Contractor, Owner and Architect, and the Subcontractor's policy will not seek contribution from any and all insurance afforded to Contractor, Owner and Architect, whether as Additional Insureds or otherwise.

Amounts of insurance and coverage provided shall be as required by the Contract Documents or as otherwise set forth herein, whichever amounts are greater. The coverage available to Contractor and Owner, as Additional Insureds, shall not be less than One Million dollars (\$1,000,000.00) for Each Occurrence, Two Million Dollars (\$2,000,000.00) General Aggregate (subject to a per project general aggregate provision applicable to the Project), Two Million Dollars (\$2,000,000.00) Products/Completed Operations Aggregate and One Million Dollars (\$1,000,000.00) Personal and Advertising injury limits. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract, including any tort liability of another assumed by contract. In addition thereto, Subcontractor shall secure and maintain Excess Liability Umbrella coverage which shall be in the amount of not less than Five Million Dollars (\$5,000,000.00) for Each Occurrence and Five Million Dollars (\$5,000,000.00) General Aggregate.

5.5 If Contractor's or Subcontractor's Work includes blasting, or the grading of land, excavation, burrowing, backfilling, tunneling, drilling, pile driving and cofferdam or caisson work, or includes moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof, the Commercial General Liability form shall not modify or exclude injury to or destruction of property arising out of or caused by such work, and any XCU (explosion, collapse and underground operations), underground property damage or work performed by subcontractors or similar exclusion or endorsement shall be voided.

5.6 Contractual liability and completed operations insurance, subject to the above mentioned limits, shall be provided, and such coverage shall be carried for a period of at least three (3) years following final completion and Owner acceptance of the Work. Coverage shall be afforded to the Additional Insureds whether or not a claim is in litigation or arbitration.

5.7 Prior to Subcontractor commencing performance of the Work on the Project under the Subcontract, Subcontractor also shall provide to Contractor a Certificate of Insurance showing liability coverage for Subcontractor and any employees, agents or subcontractors of Subcontractor for the Worker's Compensation, Employer's Liability and Automobile Liability coverages required by law and as set forth in Paragraph 5.4 hereof. Coverages shall be for no less than the statutory amounts required for Worker's Compensation, and Employer's Liability Insurance shall be for coverage of no less than One Million Dollars (\$1,000,000.00) for bodily injury caused by accident and One Million Dollars (\$1,000,000.00) for bodily injury caused by disease.

5.7.1 Subcontractor's Business Auto Liability Insurance shall provide for coverage of no less than One Million Dollars (\$1,000,000.00) for each accident for any and all automobiles owned, hired or non-owned.

5.8 Prior to commencing the Work, Subcontractor shall cause a Certificate of Insurance to be executed by one or more companies acceptable to Contractor and shall file a copy thereof with Contractor. All coverages shall be placed with an insurance company duly admitted in the State of Wisconsin and all Subcontractor

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insurers must maintain an AM Best rating of “A-“ or better with a minimum rating “A-VII”. Should Contractor request a copy of the actual policy from Subcontractor, the actual policy or copy thereof will be supplied to Contractor. Contractor may withhold payment to Subcontractor pending receipt of such Certificate in satisfactory form.

5.9 Should Subcontractor fail or neglect to provide the required insurance, Contractor shall have the right, but not the duty, to provide such insurance and deduct the cost thereof from any money due to Subcontractor any and all premiums paid by Contractor for and on account of said insurance. The policy or policies, and each certificate of insurance, shall further provide that the insurance will not be materially altered, reduced or canceled prior to at least thirty (30) days after written notice by certified mail of such cancellation or change has been provided by the respective insurer and has been received by Contractor. No less than fourteen (14) days prior to the expiration, cancellation or termination of any such policy, Subcontractor shall supply Contractor with a new and replacement Certificate of Insurance and Additional Insureds endorsement as proof of renewal of the original policy and coverage, with such new or replacement policy and endorsements in the same manner and for the same coverages and amounts in favor of Contractor and Owner as set forth in this Article.

5.10 The insurance carriers shall have no right of subrogation against Contractor, Owner and Architect and their respective officers, directors, consultants, agents and employees, and Subcontractor shall obtain from each of its insurers a waiver of subrogation on all insurance coverages required in this Article, including, but not limited to, Commercial General Liability, Workers Compensation, Employer’s Liability and Business Auto Liability, in favor of the parties identified herein with respect to losses arising out of or in connection with the Work on the Project under the Subcontract.

ARTICLE 6 CHANGES

6.1 The Work to be performed under this Subcontract may be modified in any respect by changes, additions or deletions directed by Contractor, and the Subcontract Amount and time for completion may be adjusted accordingly, by written Change Order in accordance with this Subcontract.

6.2 Contractor will provide Subcontractor with notice and, when possible, a written description of the desired change in the form of drawings or otherwise. Subcontractor shall submit a firm Change Order Request proposal for any changes in the Subcontract Amount and Subcontract time resulting from the proposed change to the Contractor within three (3) days after receipt of the notice describing the proposed change, or within such other time period as Contractor may prescribe. Subcontractor’s price proposal for the change shall not be modified or withdrawn thereafter except as otherwise agreed by Contractor. Subcontractor shall, provided a written order signed by Contractor is received, promptly proceed with the Work involved in any change. In the event Contractor directs Subcontractor to perform the change in the Work by a written order other than a signed Change Order and without agreeing to Subcontractor’s firm

proposal, Subcontractor shall nevertheless proceed to perform the change as directed.

6.3 Contractor will have authority to order minor changes in the Work not involving an adjustment in the Subcontract Amount or an extension of time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on Subcontractor. Subcontractor shall carry out such written order promptly and in the manner directed by the written order.

6.4 No alterations, increases or decreases shall be made in the Work as shown or described by the Contract Documents except as specifically authorized or directed by a written order signed by a duly authorized representative of Contractor. Subcontractor shall have no claim for additional, extra or changed Work unless such Work is undertaken in pursuance of such written signed order. Any Work performed without such written order will be at Subcontractor’s sole risk and expense.

6.5 Except as otherwise provided by Paragraph 6.2 with respect to changes in the Work proposed by Contractor, Owner or other third parties, in all circumstances whereby Subcontractor desires to preserve the right to claim or recover an increase in the Subcontract Amount, recovery of costs or damages or extension of time, Subcontractor shall, as a condition precedent, give Contractor written notice thereof (i) within ten (10) days after the first occurrence of the event giving rise to such claim, or (ii) at least ten (10) days before the date when Contractor is required by the terms of the Contract Documents to provide the same or similar notice to Owner or other third party, whichever occurs first. The notice shall particularly set forth the event(s) or fact(s) supporting and giving rise to such claim, the cost thereof and the time extension requested, if any. In no event shall Subcontractor prevail upon any monetary claim or request for extension of time in connection with any individual or cumulative changes, matters, circumstances or conditions addressed by any Change Order executed between the parties. It is further expressly agreed that under no circumstances shall any failure or delay in giving such notice be excused, and no reservation of rights to make or submit a claim at a later date shall be effective to preserve the claim if not timely and properly made in accordance with this Paragraph. The provisions of this Paragraph shall not be deemed to grant to Subcontractor rights and/or remedies otherwise excluded by this Subcontract, including without limitation the right to recover damages for delays, disruptions, interference and hindrances.

6.6 Subcontractor’s Change Order Request shall consist of a detailed cost estimate outlining the changes in the Work and detailed documentation justifying proposed changes in time. This estimate shall be computed in accordance with accepted estimating procedures and in accordance with the terms of the Contract Documents. In determining the sums payable to Subcontractor for changes in Work, costs for labor, machinery, fuel and materials shall be at prevailing rates in the Project area. Unless otherwise provided in the Contract Documents, labor costs shall mean wages paid for labor under applicable collective bargaining agreements, or under a salary and wage scale agreed upon by Contractor and Subcontractor, and shall include such welfare and other benefits, if any, as may be payable with respect thereto in accordance with any applicable salary

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and wage scale. In no case shall Subcontractor's compensation for changes in the Work or other claims include mark up in excess of 5% for overhead and 5% for profit.

6.7 Subcontractor shall, in respect of changes ordered by Contractor, including but not limited to disputed Work directives, submit labor and time card records and other records to the Contractor's Project Manager or other designated official for review on a daily basis. Such records shall accurately describing all Work performed in compliance with the order or directive. Signature of Contractor's representatives upon such records shall be solely for the purpose of confirming review thereof and shall not constitute approval of the Work performed or an agreement by Contractor to make payment to Subcontractor.

6.8 If Owner, Contractor or Architect disputes the validity or amount of a Change proposal or claim submitted by Subcontractor or if a dispute exists between Subcontractor and Contractor concerning whether the Work entitles Subcontractor to additional compensation but Contractor nevertheless directs Subcontractor to proceed with the disputed work, Subcontractor shall promptly commence, prosecute and complete such Work pending resolution of the dispute.

6.9 Only representative(s) specifically designated by Contractor in writing shall have the authority on behalf of Contractor under this Subcontract to make economic decisions affecting Subcontractor, to direct the actions of Subcontractor, to authorize changes in the Work and to issue Change Orders or otherwise modify the terms of this Subcontract. Contractor may designate additional persons with authority on behalf of Contractor to authorize overtime. Except as so designated in writing by Contractor, no person, employee or representative of Contractor shall have the authority, either actual, express, implied or apparent to obligate Contractor to any decision, directive, representation, or authorization, and it shall be the responsibility of the Subcontractor to request the written designations of authority from the Contractor. Subcontractor acknowledges that Contractor may rely on the authority of any on-site or off-site managerial or supervisory employee or officer of the Subcontractor to bind the Subcontractor.

ARTICLE 7 WARRANTY AND CORRECTION OF DEFECTS

7.1 Subcontractor warrants to Owner, Contractor and Architect that all materials, machinery and equipment furnished and incorporated pursuant to this Subcontract shall be new unless otherwise specified, that the performance of the Work shall not limit, void or otherwise compromise or diminish any manufacturer warranty that is to be issued under the Subcontract or the Contract Documents, and that all Work under this Subcontract shall be and remain of good quality, free from faults, liens, security interests and defects, merchantable and fit for their particular purpose, and in strict conformance with the Contract Documents. All Work not conforming to these standards shall be considered defective. Subcontractor agrees to indemnify and hold Owner, Contractor and Architect harmless from any losses, costs or other damages or expenses (including attorney and expert fees and expenses) resulting from any breach of the foregoing warranty. Nothing herein shall in any way limit the right of Owner, Contractor or Architect to assert

claims for damages resulting from patent or latent defects in the Work for the period of limitations prescribed by law. Subcontractor shall bear all expenses incurred in connection with the inspection, removal, repair, correction, handling and transportation of defective or nonconforming Work or Work whose acceptance has been revoked. In addition, at Contractor's option, Subcontractor shall: (i) bear the costs of replacement materials, equipment and labor and all damages incurred by Contractor and (ii) pay Contractor for all expenses incurred in and delay caused by remedying defective or otherwise nonconforming Work. The provisions of this Paragraph shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents and shall survive the making and acceptance of final payment and/or termination of this Subcontract. Subcontractor agrees to furnish to Contractor upon Substantial Completion of the Work a Subcontractor Warranty setting forth the terms hereof in the form attached hereto and designated as Exhibit "G".

7.2 Subcontractor shall, at its sole expense, promptly and properly repair, replace or otherwise correct any Work that is (i) rejected by Owner, Contractor or Architect, or (ii) known, observed or discovered at any time by Subcontractor, Contractor, Owner or Architect to be defective or failing to conform to the Contract Documents and shall pay Contractor for all expenses incurred in any delay caused by remedying defective or otherwise nonconforming Work. Furthermore, if within one year after final completion and acceptance of the Project, or such longer period as established with respect to Contractor's obligations under the Contract Documents, the Work or any portion thereof is found to be not in accordance with the requirements of the Contract Documents, Subcontractor shall correct it promptly after receipt of written notice from Contractor to do so. The period within which Subcontractor shall be obligated to correct Work shall be extended with respect to portions of Work, including corrective work, first performed after final completion and acceptance of the Project. Subcontractor's obligations under this Paragraph shall survive completion and acceptance of the Work and Project and termination of this Subcontract.

7.3 If Subcontractor fails to correct any defective or nonconforming Work as required or persistently fails to carry out Work in accordance with the Contract Documents, Contractor may, in addition to any other right or remedy afforded by this Subcontract, issue a written order to Subcontractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, Contractor's right to stop the Work shall not give rise to a duty on the part of Contractor to exercise such right for the benefit of Subcontractor or other persons or entities.

7.4 Nothing contained in this Article shall be construed to establish a period of limitation with respect to obligations of Subcontractor under this Subcontract. Paragraph 7.2 relates only to the specific obligation of Subcontractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, including, without limitation, the warranty and other obligations set forth in Paragraph 7.1 nor to the time within which proceedings may be commenced to establish Subcontractor's obligations other than the correction of the Work nor to the time within which defects or deficiencies in the Work must first be observed or experienced.

Subcontract

7.5 All rights and remedies afforded to Contractor by this Article as against Subcontractor may be assigned to Owner.

ARTICLE 8

SUBCONTRACTOR OBLIGATIONS

8.1 Subcontractor acknowledges that it has investigated and satisfied itself as to the conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads or other forms of access, and uncertainties of weather, physical conditions of the site, the conformation and conditions of the ground, and the character of machinery, equipment and facilities needed preliminary to and during prosecution of the Work. Subcontractor further acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials, obstacles and other conditions that may be encountered. Contractor assumes no responsibility for any conclusions or interpretations made by Subcontractor on the basis of the information made available by the Owner, Contractor or Architect.

8.2 Subcontractor shall carefully study and compare the Contract Documents and shall at once report to Contractor any error, inconsistency or omission, or any discrepancy in figures, drawings or specifications that affect the Work Subcontractor may discover. Notwithstanding the dimensions given on the Plans, Specifications and other Contract Documents, it shall be the obligation and responsibility of Subcontractor to take such measurements as will insure the proper matching and fitting of all items and components of the Work covered by the Subcontract with other elements of the Work and with contiguous work of others. Subcontractor shall verify measurements, lines and grades of existing conditions and structures at the site, and when indicated dimensions are not in agreement with field measurements, shall notify Contractor immediately, in writing, requesting clarification. Subcontractor shall be responsible for the accuracy of all field measurements and shall not rely on any data furnished by or prepared by Contractor. Subcontractor is responsible for his own layout and for the protection and preservation of all installed engineering data and layout points and shall take all necessary precautions to insure that said data or points are not damaged, destroyed, altered or changed. Re-engineering, if required, shall be performed at Subcontractor's expense. Subcontractor shall be responsible for and shall perform all cutting, fitting, patching, sleeving, grouting and sealing of its Work that may be required to fit its Work to, receive or be received by the work of other contractors, or otherwise required in the prosecution of the Work.

8.3 Subcontractor shall submit to Contractor, within twenty (20) days after execution of this Subcontract, or as otherwise scheduled or prescribed by Contractor, complete shop drawings, data, catalog cuts, samples and other appropriate submittals as required by the Contract Documents. Approval thereof by Contractor and/or Architect shall not relieve Subcontractor of its obligation to perform the Work in strict accordance with the Contract Documents, nor of its responsibility for the proper matching and fitting of the Work with contiguous work. Failure of Subcontractor to make submittals of shop drawings, product data and similar items

in a timely fashion and as required to assure timely completion of the Work shall be cause for termination of this Subcontract as provided by Article 11.

8.4 If Subcontractor shall make changes in design, including dimensional changes, either through shop drawings or actual field work, it shall accept all responsibility for the structural and functional adequacy of such changes and their acceptance by Owner, Contractor, Architect or Engineer. Any structural or functional inadequacies which may develop because of such changes shall be remedied by Subcontractor in spite of any approvals given by Owner, Contractor, Architect or Engineer unless such change is specifically included in a change order provided for in Article 6. In addition, the costs of additional work, redoing or repairing work incurred by other trades or by Contractor resulting from such changes shall be borne by Subcontractor.

8.5 Subcontractor shall at all times supply adequate tools, appliances and equipment, a sufficient number of properly skilled workmen and a sufficient amount of materials and supplies of proper quality to efficiently and promptly prosecute the Work. Subcontractor shall promptly pay for all material purchased, including taxes, customs, duties, tariffs, transportation, freight and insurance charges and any other charges or costs imposed or payable for such materials, shall pay required fringe benefits and shall pay all workmen each week, and, if requested by Contractor, obtain and furnish Contractor weekly with signed receipts from all workmen showing the date of payment, amount paid, number of hours paid, the days on which said labor was performed, the classification of the labor so paid and the rate of wage per hour paid. Subcontractor also shall supply Contractor weekly with two copies of payroll verified by affidavit, if requested.

8.6 Subcontractor shall be solely responsible for all acts, omissions and behavior of Subcontractor's employees, sub-subcontractors, materialmen and their agents and employees and other persons employed by Subcontractor. Any employee, representative or other person for whose actions Subcontractor is responsible who Contractor or Owner determines to be disruptive, intoxicated, incompetent or inexperienced for the work or task to be performed, or who has engaged in drug or other substance abuse or is otherwise detrimental to the orderly, cooperative and efficient progress of work at the Project site immediately shall be removed by Subcontractor following Subcontractor's receipt of notification of such determination from Contractor. In the event that Subcontractor fails to effectuate the removal as directed in such notice, Subcontractor consents to the removal of such person by Contractor or Owner. This paragraph shall not be deemed to create a duty on the part of Contractor or Owner to investigate or discover detrimental conduct of personnel at the site or to effectuate the removal of such persons. No determination or action taken by Contractor under this paragraph shall entitle Subcontractor to claim or recover additional costs or damages or serve to excuse Subcontractor from its obligations hereunder, or entitle Subcontractor to claim and receive an extension of time.

8.7 Subcontractor shall at its own expense (i) take all necessary precautions to protect the work of other trades from any damage caused by Subcontractor's operations, and (ii) watch over, care for and protect from damage or injury by any cause whatsoever,

Subcontract

all of Subcontractor's Work, complete or otherwise, and all of its materials, supplies, tools, machinery and equipment at or near the Project. Subcontractor agrees, without loss or damage to Contractor, to make good any loss or damage to any and all such Work, materials, supplies, tools, machinery and equipment up to the final acceptance of the entire Project by the Owner. Subcontractor is not relieved of any liability or responsibility hereunder by reason of Contractor's failure to provide a watchman, even if a watchman is required by the Contractor's General Contract.

8.8 Subcontractor acknowledges that safety is of prime importance to Contractor, and agrees to cooperate fully and completely with Contractor in efforts to prevent injuries to personnel. Subcontractor shall be responsible for the safety of its employees and those of other contractors working at the Project site that may be affected by Subcontractor's Work. Subcontractor shall take all reasonable safety precautions with respect to its Work, including providing a safe work environment for persons and property on or off of the Project site. Subcontractor shall comply with such safety measures, programs and accident reporting procedures as may be initiated by Contractor or authorized third parties and shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property, including but not limited to State and Federal Occupational Health and Safety Acts ("OSHA"), in accordance with the requirements of the Contract Documents. Subcontractor shall report immediately to Contractor any injury to any of Subcontractor's employees or other persons at the site or any property damage at the Project site in connection with the Work and activities under the Subcontract. When and if so ordered, Subcontractor shall stop or correct any part of the Work which Contractor deems to be unsafe or otherwise improper. If Subcontractor neglects to take such corrective measures, Contractor may do so at the cost and expense of Subcontractor and may deduct the cost thereof from any payments due or to become due to Subcontractor, or, at its option, Contractor may make demand upon Subcontractor for reimbursement of such cost, and Subcontractor shall fully reimburse Contractor for the same within five (5) days of such demand. Failure on the part of Contractor to stop performance of the Work which is in violation of legal or safety requirement shall in no way relieve Subcontractor of its sole responsibility therefor. In the event that any action is taken against Contractor, including but not limited to assessments of fines or penalties, whether by State or Federal OSHA agencies or otherwise, due to any actual or alleged violation, act or omission of the duties, responsibilities and obligations set out herein that are caused or created by Subcontractor or any other party for whom Subcontractor is responsible, whether also caused in part by Contractor, Subcontractor shall defend, indemnify and hold Contractor harmless therefrom, and shall be liable for all costs and damages sustained by Contractor as a result thereof, including, but not limited to, fines, penalties and attorney fees incurred in the defense of or appeal from any such action, and any OSHA proceeding or hearing which may occur or be related thereto. The failure of Subcontractor to comply with these requirements may be treated by Contractor as a default under the Subcontract as provided in Article 11 hereof.

8.9 Subcontractor shall comply with federal, state and local tax laws, social security acts, unemployment compensation acts and worker's compensation acts, whether now existing or hereafter

enacted, insofar as applicable to the performance of the Subcontract, and shall comply with all procedures, rules, executive orders or other requirements and regulations with regard to nondiscrimination issued or to be issued by any local state or federal government or agency, including the Equal Employment Opportunity Commission, insofar as they may apply to the Work. Subcontractor, in performing the Work required by the Subcontract, shall not discriminate against any employees or applicants for employment because of race, creed, color, sex or national origin. Subcontractor is required to actively pursue a policy of non-discrimination in accordance with directives of Owner or Contractor, and a failure to do so may be treated by Contractor as a breach of or default in the Subcontract. Subcontractor agrees that the provisions of this Paragraph and any other provisions required by the General Contract regarding employment practices and anti-discrimination shall be included and inserted in all of its subcontracts or material supply agreements, and agrees in all other respects to comply with all terms and conditions contained in Contractor's General Contract relating to employment practices.

8.10 Subcontractor shall give all notices and comply with the requirements of all applicable insurance policies and all codes, laws, ordinances, rules, regulations and orders of any public authority, bearing on the performance of the Work under the Subcontract, whether now existing or hereafter promulgated. Subcontractor shall secure and pay for all permits, fees and licenses necessary for the execution of the Work, and shall pay all local, state and federal taxes in connection with the Work, and agrees that all costs thereof are included in the Subcontract Amount. There shall be no increase in the Subcontract Amount resulting from any new or additional taxes or contributions. When required by Contractor, Subcontractor will furnish satisfactory evidence showing that all such payments have been made. Subcontractor shall promptly review all Contract Documents and report in writing to Contractor any variance to such requirements, codes, laws, ordinances, rules and regulations. If Subcontractor performs any Work contrary to such requirements, codes, laws, ordinances, rules and regulations Subcontractor shall assume full responsibility therefor, shall bear all costs and damages attributable thereto, and shall hold Contractor harmless from any loss or expense arising out of any violation of such requirements, codes, laws, ordinances, rules and regulations.

8.11 Subcontractor shall be responsible for and provide all hauling, scaffolding, tools, lifting and hoisting equipment, freight, shop drawings and equipment to perform the Work provided by the Subcontract. Subcontractor shall be responsible for unloading and hoisting all of its materials, supplies, tools, machinery and equipment in order to ensure the timely completion of Subcontractor's Work, and shall provide all temporary facilities and services necessary to complete the Work in accordance with the Contract Documents and as required by weather and other work conditions at the Project site. The Contractor shall not be responsible for providing any temporary facilities or services necessary for Subcontractor to perform the Work, except as may be specifically noted otherwise herein or otherwise separately agreed in writing.

8.12 Subcontractor shall limit use of the site to areas defined by Contractor and to the construction limits for its Work and storage to allow for work of other contractors and third parties and shall assume full responsibility for the protection and safekeeping of materials,

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machinery and products provided under the Subcontract and stored on the site or elsewhere during fabrication, storage and shipping. Subcontractor shall, at no cost to Contractor, move any stored products which interfere with operations of the Contractor or other contractors or subcontractors as directed by Contractor and obtain and pay for the use of additional storage or work areas needed for Subcontractor's operations.

8.13 Subcontractor will clean up and haul off the premises, or to a place on the premises specifically designated by Contractor, all debris occasioned by the Work done hereunder and will leave the Project and premises clean and free of equipment, machinery, materials, temporary facilities and debris. Any trash, debris or liquid that poses a possible threat of fire or safety shall be removed from the premises immediately. If, after twenty-four (24) hours notice by Contractor to Subcontractor, Subcontractor has not diligently proceeded with clean-up as outlined in this Paragraph, then Contractor may proceed with such clean-up work at Subcontractor's cost and expense.

8.14 Subcontractor shall provide safe and sufficient facilities at all times for inspection of the Work by Contractor, Owner, Architect, Engineer, or their authorized representatives. Within twenty-four (24) hours after receiving written notice from Contractor Subcontractor shall proceed promptly to take down all portions of the Work and remove from the grounds and buildings all material, whether worked or unworked, which Contractor, Architect, Engineer, or Owner shall condemn or fail to approve, and shall promptly make good all such Work, and all other Work damaged or destroyed in removing or making good said condemned or unapproved Work, all without additional cost or charge to Contractor.

8.15 If Contractor determines that any Work requires special inspection, testing, or approval it may perform or order Subcontractor to perform such special inspection, testing or approval. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Subcontract documents, Subcontractor shall bear all costs thereof by deductive Change Order or direct reimbursement to Contractor as appropriate.

8.16 Except as may otherwise be specifically provided by this Subcontract to the contrary, Subcontractor shall take directions and orders regarding the performance of this Subcontract only from Contractor and shall be solely responsible to Contractor for all construction means, methods, techniques, sequences and procedures utilized in performance of the Work. Contractor shall have the right to withhold payment for Work resulting from directions or orders from third parties that are not communicated to Subcontractor directly by Contractor's authorized personnel.

8.17 Subcontractor, for itself and all others directly or indirectly acting for, through or under Subcontractor, including its subcontractors, material suppliers and all other persons for whom Subcontractor is responsible, in consideration of Contractor making the Subcontract, agrees that no stop work notices, mechanic's liens or claims, or any statutory claim notices to Owner shall be filed against the Project or premises or any interests therein, or against any fund or money due or to become due from Owner to Contractor for or on account of any work, materials, or other items performed or

furnished in connection with the Work, except in the event that such waiver is prohibited by law in which event such notice, lien or claims shall not be filed or issued until and unless, as a contractual precondition to the right to proceed with such action, Subcontractor first furnishes written notice to Contractor of its nonpayment and the basis for and amount of such claim within five (5) days from the date that such claim first arises. Should Subcontractor fail to furnish such notice to Contractor, or fail to furnish it in a timely manner, Subcontractor's right to proceed to exercise such statutory remedies as may be allowed to Subcontractor shall be barred. In the event that such waiver is not prohibited by law, then Subcontractor hereby expressly and unconditionally waives and releases any and all such rights and remedies to file such notices, liens and claims, and agrees that this waiver and release shall be an independent covenant and shall apply as well to work performed and materials furnished under a change order or supplemental agreement for extra or additional work.

8.18 To the fullest extent permitted by law, Subcontractor will save and keep the Project structures and improvements, the real estate within which the Project is situated, the interests of Owner and all other persons in such Project and real estate, and the contract proceeds or other moneys now due or hereafter to become due and payable by Owner to Contractor, free from all third party mechanic's and other liens and from any claim against the contract proceeds or to establish the personal liability of Owner or Contractor by reason of the Work or any labor, materials or other things used therein. If Subcontractor fails to remove any lien or claim against Owner or the contract proceeds by any of its subcontractors, material suppliers or others for whom it is responsible, by bonding or otherwise as directed by Contractor, and within the time period required by Contractor, then Contractor may retain sufficient funds out of any money due or thereafter to become due by Contractor to Subcontractor to pay the same and all costs incurred by reason thereof and may pay or bond said lien and costs out of any funds at any time in the hands of Contractor and otherwise owing to Subcontractor.

8.19 Whenever it may be useful or necessary for Contractor to do so, Contractor shall be permitted to occupy or use any portion of the Work which has been either partially or fully completed by Subcontractor before final inspection and acceptance thereof by Owner, but such use or occupation shall not relieve Subcontractor of its guarantee of said Work and materials nor of its obligation to make good at its own expense any defect in materials or workmanship which may occur or develop prior to Contractor's release from responsibility to Owner; provided, however, Subcontractor shall not be responsible for the maintenance of such portion of the Work as may be used or occupied by Contractor nor for any damage thereto that is due to or caused by the negligence of Contractor during such period of use or occupancy.

8.20 Subcontractor shall comply with all state and federal safety laws, including of the Federal Occupation Safety and Health Administration ("OSHA") and its Hazardous Communications Law. Subcontractor shall have in place, and be conforming to, a written Hazard Communication Program meeting the Federal OSHA Standard 1926.59 and 29 CFR 1910.1200, This program must include provisions for a chemical inventory, container labeling, material data sheets, employee training, personnel protection

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equipment emergency responses, hazards of non-routine tasks, multi-contractor sites, and posting. Subcontractor shall submit a copy of his HAZCOM Program to Contractor's Project Manager prior to performing any work under this Subcontract. Subcontractor also shall supply to Contractor's Project Manager material data sheets for all hazardous materials prior to their use in the performance of this work. Consistent with the site safety obligations set forth under Paragraph 8.8 and its subparts hereof, in the event that any action is taken against Contractor, including but not limited to assessments of fines or penalties, whether by State or Federal OSHA agencies or otherwise, due to any actual or alleged violation, act or omission of the duties, responsibilities and obligations set out herein that are caused or created by Subcontractor or any other party for whom Subcontractor is responsible, whether also caused in part by Contractor, Subcontractor shall defend, indemnify and hold Contractor harmless therefrom, and shall be liable for all costs and damages sustained by Contractor as a result thereof, including, but not limited to, fines, penalties and attorney fees incurred in the defense of or appeal from any such action, and any OSHA proceeding or hearing which may occur or be related thereto. The failure of Subcontractor to comply with these requirements may be treated by Contractor as a default under the Subcontract as provided in Article 11 hereof.

8.21 Subcontractor and his employees shall comply with all provisions of the Drug Free Workplace Act of 1988 as amended. The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the workplace is prohibited. Subcontractor is responsible for the development implementation, administration and enforcement of a formal substance abuse policy which, as, a minimum, meets the standards set forth by the Owner and/or Contractor. In all cases where Subcontractor is permitted to employ a sub-subcontractor, Subcontractor is responsible for insuring that the sub-subcontractor and sub-subcontractor's employees are in compliance with the Substance Abuse Policy. Subcontracts between Subcontractor and sub-subcontractors must stipulate that the Owner and/or Contractor reserve the right to audit sub-subcontractor's substance programs.

8.22 Subcontractor shall not employ workers, materials, machinery or equipment which may cause strikes, work stoppages, sympathy strikes or any other interruption of or interference with work or any disturbances by workers employed by Subcontractor, Contractor, Owner or other contractors or subcontractors on or in connection with the Work or the Project or at the location thereof. All labor used throughout the Work shall be acceptable to Owner and Contractor and of a standing or affiliation that will in no case or under any circumstances cause any disturbance, interference or delay to the progress of the Project, or any other work being carried on by Owner or Contractor in any other town, city or location in the United States

8.23 Subcontractor shall recognize and comply with any and all labor agreements between Contractor and organized trade unions as applicable to the Project and shall be bound to all terms and conditions thereof, including payment of required hourly wages and fringe benefits, work rules, trade jurisdictional determinations, subcontracting requirements and, if necessary, signing a project agreement between Subcontractor and the union(s). If Subcontractor

is a party to one or more union labor agreements, Subcontractor represents that it has, prior to execution of this Subcontract, notified Contractor in writing as to the specific unions with which Subcontractor has entered into labor Agreements.

8.24 Subcontractor will use best efforts to cooperate with the Contractor and any other affected parties to resolve any jurisdictional disputes that may arise during the prosecution of the Subcontractor's Work, and shall abide by the procedures contained in and any decisions rendered under any applicable plan for settlement of jurisdictional disputes. Subcontractor shall, in all cases, continue to Work while any jurisdictional dispute remains unresolved. Subcontractor shall Work in harmony with Contractor and all other subcontractors to assure that no labor disputes of any kind involving the Contractor, Subcontractor or any other contractors, Subcontractors or sub-subcontractors, or their respective employees or agents shall occur or be manifested on the Project, and Subcontractor shall only employ persons on the Project who will Work at all times in harmony with other persons and trades employed on the Project. If Subcontractor has labor agreements with any organized labor unions, Subcontractor shall work in harmony with any and all contractors, subcontractors or sub-subcontractors who employ personnel that are not represented by an organized union.

8.25 Subcontractor shall not be relieved of its obligations under this Subcontract by any jurisdictional dispute, work stoppage, slowdown or any other circumstances involving its employees that cause, create or aggravate any interference, delay, suspension or other form of impairment to performance or completion of any work by any person on the Project. If any such work stoppage, slowdown or any other action does occur due to any type of labor dispute or a picket line established for any reason, Subcontractor shall immediately adopt any and all measures (including, but not limited to, a separate gate) as necessary to eliminate and avoid delay or disruption to Subcontractor's Work or any other work of others at the Project. If a labor dispute involving the Subcontractor does occur and, in the judgment of Contractor or Owner, such dispute causes or threatens to cause delay or disruption to the orderly and efficient progress of construction, then such occurrence shall be deemed a default hereunder and just cause for termination of this Subcontract or other action or remedy permitted by the Contract Documents or applicable laws.

8.26 Subcontractor shall abide by, recognize and respect any split gate, reserve gate or similar system on the Project and agrees that the existence of a split gate, reserve gate or similar system shall not be grounds for any form of picket lines, strikes or walk-outs. Should any workers or employees of Subcontractor performing any work for the Project engage in a strike, boycott or other work stoppage or cease to work, due to picketing or a labor dispute of any kind or nature, whether involved with or caused by employees of Contractor, Subcontractor, any other subcontractor, supplier, trade, union or entity, the failure or refusal of those workers or employees to perform the Subcontractor Work shall be considered as a default

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under this Subcontract, and the remedies for defaults set forth in Article 11 and elsewhere herein shall apply. 8.27 Subcontractor, as a condition of entering into this Subcontract, represents that it has obtained any and all requisite consents from any labor union, labor organization or union representative involving Subcontractor's Work to the terms and conditions of ¶8.22 through ¶8.26 hereof, and Contractor shall be entitled to rely upon such representations and consents having been obtained as a condition for Subcontractor executing this Subcontract and performing hereunder.

ARTICLE 9 INDEMNIFICATION

9.1 To the fullest extent permitted by law, Subcontractor shall indemnify, hold harmless and defend at its own expense Contractor, Owner and Architect, and all of their officers, directors, agents and employees, from and against all claims, suits, demands, causes of action, damages, losses, costs and expenses, including attorney and expert fees and expenses, arising out of or resulting from, in connection with or incidental to, the performance of Subcontractor's Work under this Subcontract, or occasioned by any breach or nonperformance of its terms, or any labor, materials or equipment furnished hereunder, provided that any such claim, suit, demand, cause of action, damage, loss, cost, fees or expense: (a) is attributable to bodily injury, sickness, disease, or death, or actual or alleged infringements of any patent, trademark, copyright or other intellectual property or proprietary right, or the breach of or failure to comply with any term, condition or obligation under the Subcontract, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use thereof and consequential damages resulting therefrom, or is attributable to damages from economic harm or loss, or is attributable to damages to any party indemnified hereunder or its employees, servants and agents, whether such claim, suit, demand, cause of action, damage, loss, cost, fees or expense, is based upon, or claimed to be based upon, statutory, contractual, tort or other liability of any indemnified party hereunder; and (b) is caused in whole or in part by any negligent act or omission, breach of contract, breach of warranty, strict liability, or other breach of any duty or obligation of Subcontractor or anyone directly or indirectly employed by it or anyone for whose acts it may be liable, or is caused by or arises out of the use of any products, materials, machinery or equipment furnished by Subcontractor, regardless of whether such claim, suit, damage, loss, cost or expense is caused in part by any joint, several or comparative, but not sole, negligent act or omission, breach of contract, breach of warranty, strict liability, or other breach of duty or obligation by any party indemnified hereunder. Without limiting the generality of the foregoing and in addition thereto, the indemnification, hold harmless and defense duties and obligations of Subcontractor under this Paragraph shall apply to any claims, suits, demands, causes of action, damages, losses, costs and expenses, including attorney and expert fees and expenses and court costs, of whatsoever kind, nature and type, whether based in contract, tort or otherwise, of Subcontractor and its employees against any other subcontractor, material supplier or third party and to the claims of whatsoever kind, nature and type, whether based in contract, tort or otherwise, of any other subcontractor, material supplier or third party, or its employees, against Subcontractor or Contractor or any other party indemnified hereunder, consistent with the provisions of the Wisconsin Anti-Indemnity Statute.

9.2 In any and all claims against Contractor, Owner or Architect or any of their officers, directors, agents or employees, by any employee of Subcontractor or anyone directly or indirectly employed by Subcontractor, or anyone for whose acts Subcontractor may be liable, the indemnification obligation under Paragraph 9.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.

9.3 The obligations of Subcontractor under Paragraph 9.1 shall not apply to Architect, its agents or employees for any negligent act or omission of Subcontractor in whole or in part caused by or arising out of (1) the preparation or approval by Architect, its agents or employees of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or failure to give directions or instructions by Architect, its agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.

9.4 Subcontractor shall indemnify and hold Contractor and Owner, and all of their officers, agents, employees and servants, harmless from claims, suits, damage, loss or liability of any nature, including costs, royalties, license fees, expenses and legal fees for or on account of use on any patented or unpatented invention, article, material or appliance use or furnished under the Subcontract, including use by or for Owner after installation and for any alleged or actual infringement or violation of any patent or patent right, arising in connection with the Subcontract. Subcontractor shall pay all royalties and defend any suit or proceeding brought against Contractor, Owner or Architect so far as based on a claim that any machinery, equipment or any part thereof, or software furnished under the Subcontract constitutes an infringement of its normal intended use of any patent right.

9.5 The indemnification, hold harmless and defense duties and obligations of Subcontractor arising under the Subcontract and this Article shall extend to any and all claims, suits, demands, causes of action, damages, losses, costs and expenses, including attorney and expert fees and expenses, occurring after the Work under this Subcontract is completed and the performance obligations of Subcontractor hereunder are concluded as well as while the Subcontract remains in full force and effect, and such indemnification, hold harmless and defense duties and obligations shall continue until there is a final adjudication or determination that any and all such claims, suits, demands and causes of action against the parties indemnified hereunder are fully and finally barred by applicable statutes of limitation or operation of law.

ARTICLE 10 DISPUTES

10.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If Claims, disputes or disagreements do arise, the Contractor and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner

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so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2 The Contractor and Subcontractor will first attempt to resolve Claims, disputes or disagreements at the field level through discussions between project managers. If a Claim, dispute or disagreement cannot be resolved through discussions between the project managers, upon the request of either party, senior executives from the Contractor and Subcontractor shall meet as soon as conveniently possible, but in no case later than twenty one (21) days after such a request is made, to attempt to resolve such Claim, dispute or disagreement. If after a meeting of the senior executives, it is determined that the Claim, dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit the Claim, dispute or disagreement to non-binding mediation as set forth hereinafter.

10.3 Any Claim or dispute arising out of or related to the Subcontract shall, be subject to mediation as a condition precedent to arbitration by either party.

10.4 The parties shall endeavor to resolve their Claims and disputes by mediation. Mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

10.5 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Madison, Wisconsin, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If mediation is unsuccessful, the parties shall proceed to arbitration as described hereinafter.

10.6 Any decision or determination by Owner or Architect under the Contract Documents that in any manner and by whatever means becomes binding upon Contractor shall also become equally binding upon Subcontractor insofar as it relates to or affects Subcontractor's Work or other obligations assumed or to be fulfilled by Subcontractor, including without limitation any amounts and payments to which Subcontractor may be entitled or for which Subcontractor may be liable. Any award, judgment or agreement in settlement of a dispute concerning such matters and resulting from arbitration, litigation or negotiations in which Owner and Contractor are parties or participants shall be as binding upon Subcontractor and its Surety as though Subcontractor and its Surety were named and joined in such proceeding, provided that Subcontractor has been given a reasonable opportunity to join, participate, assist or provide supporting evidence in the presentation of any claim, defense or other issue in controversy that is settled or resolved thereby.

10.7 All claims, disputes and other matters in controversy arising out of or related to the Subcontract, or the performance or breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, but as modified by this Article, unless the parties mutually agree otherwise. This Paragraph shall not be construed to require Contractor and Subcontractor to submit to

arbitration any claim, dispute or other matter involving, arising from or giving rise to (i) a claim by or against Owner or other third party unless Owner or such third party is subjected to the jurisdiction of, or consents in writing to be joined as a party to the arbitration between Contractor and Subcontractor, (ii) termination of this Subcontract, pursuant to Paragraph 11.2, (iii) claims which have been waived by the making or acceptance of final payment as provided by Paragraph 4.16, or (iv) costs or damages sustained or claimed by Subcontractor because of delay, disruption, interference, hindrance or suspension of Work or any other act, omission, condition or occurrence in respect of which any of the provisions of this Subcontract or other Contract Documents deny or limit Subcontractor's rights of claim or recovery. The arbitrators may decide only the issues presented to them and may not vary or disregard any terms of this Subcontract or the Contract Documents. This agreement to arbitrate shall be binding upon the parties and judgment may be entered upon the arbitration award in accordance with applicable law in any court having jurisdiction thereof. The arbitration award shall be as binding upon Subcontractor's surety as if such surety were named and joined in the arbitration proceeding and, at Contractor's option, such surety may be joined as a party therein. Venue for such arbitration or proceedings shall be in Madison, Wisconsin, and any hearing or conference shall take place in that locale. The arbitration or proceedings shall be governed by the laws of the State of Wisconsin.

10.8 No dispute shall interfere with the progress of the Work, and Subcontractor shall proceed with all Work, including disputed work, despite the existence of, and without awaiting the resolution of, any such dispute. The failure or refusal of Subcontractor to continue work under such circumstances shall constitute a default under the Subcontract as provided in Article 11 hereof.

10.9 In any instance or proceeding whereby any claim, dispute or other matter in controversy between Contractor and Subcontractor involves, arises from or gives rise to a similar claim, dispute or other matter in controversy as between Contractor and Owner or another third party, Subcontractor shall furnish and present evidence, documentation and other information to support its claim, defense or other position with respect thereto and shall pay or reimburse Contractor for all costs, attorney and expert fees and expenses associated with the negotiation, settlement, arbitration, litigation or other means undertaken to resolve such matter. It is expressly understood that as to any and all Work performed or agreed to be performed by the Subcontractor and as to any and all actual or alleged damages incurred by Subcontractor in connection with the Project, Contractor shall under no circumstances be liable to Subcontractor to any greater extent than Owner or other third party is found liable to Contractor.

10.10 In any instance whereby Contractor is entitled, under the terms of this Subcontract, to be indemnified by or recover any moneys from Subcontractor, Contractor shall be entitled, in addition, to recover from Subcontractor (i) interest on any sums due from Subcontractor at the rate of eight percent (8%) per annum to accrue from the date due until paid, notwithstanding any dispute or uncertainty concerning the means or standards by which the amount of monetary recovery is to be ascertained, (ii) reasonable attorney and expert fees and expenses incurred by Contractor for all

investigation, negotiation, litigation, arbitration and other such services commonly performed by attorneys, and (iii) all court costs, fees paid to experts, arbitration fees and like expenses.

ARTICLE 11 DEFAULT AND TERMINATION

11.1 Contractor shall have the right at any time, upon forty-eight (48) hours prior written notice to Subcontractor, to terminate this Subcontract in whole or in part and require Subcontractor to cease work thereunder; such termination shall be rightful as against Subcontractor whether undertaken because of Subcontractor's default or for the convenience of Owner or Contractor. If termination is for default, the respective rights and obligations of the parties shall be as provided in Paragraph 11.2; if termination is for the convenience of Contractor or Owner, or if the Subcontract is terminated upon Contractor's belief that Subcontractor is in default but it is subsequently determined that Subcontractor was not then in default, the rights and obligations of the parties shall be as provided in Paragraph 11.4 hereof.

11.2 If Subcontractor at any time (i) refuses or neglects to supply adequate and competent supervision or a sufficiency of properly skilled workmen or of materials of the proper quality or quantity, or (ii) fails in any respect to prosecute the Work with promptness and diligence or otherwise in accordance with the Contract Documents, or (iii) fails in the performance of any agreement or obligation on its part herein contained or provided by the Contract Documents, or (iv) delays the work of Contractor, other subcontractors or other third parties, or (v) is otherwise in default as defined by the provisions of the Contract Documents as applicable to the right of the Owner or other third party to terminate its contract with Contractor, or if any of the above stated events or conditions of default shall exist under any uncompleted separate or additional subcontract between Subcontractor and Contractor, whether for this Project or any other project, then Contractor may: (a) provide such materials, supplies, equipment and labor as may be necessary to complete said Work, or any portion thereof, on a regular or overtime basis, and take such other steps as Contractor may, in its discretion, deem advisable or necessary to correct or address such default or failure, pay for same and deduct the amount so paid from any money then or thereafter due Subcontractor; (b) terminate the employment of Subcontractor on the Project upon the grounds of Subcontractor's default, whereupon Contractor shall have the right in addition to such other rights and remedies as may be afforded to Contractor under the Subcontract, the Contract Documents or by law, to enter upon the premises and take possession of Subcontractor's materials, equipment, tools and appliances of any kind whatsoever, and to employ or contract with one or more other persons or use its own forces to finish the Work and/or to correct or take other action to bring the Work into conformity with the requirements of the Contract Documents; or (c) by notice addressed to Subcontractor's surety, require the surety to enter upon the premises and take possession, for use in completing the Work, of all the materials, supplies, tools, equipment and appliances of Subcontractor thereon, and to complete the Work, or to have the same completed by others, all in accordance with the Contract Documents. Regardless of whether Contractor elects to proceed under (a), (b) or (c) hereof, Contractor shall not be liable to Subcontractor for any further

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payments under the Subcontract until final payment is due and then only if and to the extent that the unpaid balance of the amount to be paid under the Subcontract exceeds any costs and damages as herein provided.

11.3 In the event that Contractor shall elect to proceed as provided under Paragraph 11.2 (a), (b) or (c) hereof, Subcontractor shall not be entitled to receive any payment under the Subcontract which might otherwise be due it until the Work shall be finished and payment in full therefor shall be made by Owner to Contractor, at which time, if the unpaid balance of the amount to be paid under this Subcontract shall exceed the expenses incurred by Contractor in completing and correcting Subcontractor's Work, plus any costs and damages sustained by Contractor by reason of such failure or lack of performance by Subcontractor, including but not limited to delay damages, attorney's fees, costs of administration, and a reasonable allowance for overhead and profit, such excess shall be paid by Contractor to Subcontractor, or to Subcontractor's surety if Contractor proceeds to complete the work under Paragraph 11.2 (c), but if such expense plus costs and damages shall exceed such unpaid balance, Subcontractor and its surety shall be liable to Contractor for such deficiency. Subcontractor or its surety shall pay Contractor such excess within a thirty (30) day period after submission to Subcontractor or its surety of Contractor's invoice. A determination of default made by Contractor in good faith under the belief that a default exists under the terms hereof, shall be conclusive on the fact of such default and on Contractor's right to proceed as herein provided.

11.4 If the Subcontract is terminated for the convenience of Contractor, or if terminated upon Contractor's belief that Subcontractor is in default but Subcontractor is not then in default, then Contractor shall pay to Subcontractor an amount limited to the unpaid Subcontract value of authorized and approved Work performed by Subcontractor prior to notice of termination, adjusted for amounts and damages, if any, for which Subcontractor is liable or which the Contractor is entitled to retain and withhold pursuant to the terms of the Subcontract. Recovery by Subcontractor of lost anticipated profit, overhead, or other direct, indirect or consequential damages relating to portions of Work not performed under the uncompleted portions of the Subcontract are hereby specifically excluded. The payment provided by this Paragraph shall constitute Subcontractor's sole and exclusive remedy in the event of such termination. A termination caused by disapproval of Subcontractor by Owner or other third party shall not entitle Subcontractor to recover termination expenses under this Paragraph.

11.5 If Subcontractor files a petition or proceedings under the Bankruptcy Code, the Subcontract shall terminate if Subcontractor or Subcontractor's Bankruptcy Trustee rejects the Subcontract, or if there exists a default hereunder by Subcontractor at the time of its bankruptcy filing and Subcontractor or its Trustee is not able or willing to furnish adequate assurance of Subcontractor's continued performance of its duties and obligations under the Subcontract, including curing or correcting any and all defaults hereunder, or if Subcontractor otherwise is unable to comply with the requirements for timely assuming the Subcontract under the applicable provisions of the Bankruptcy Code. While Contractor is waiting on Subcontractor or its Bankruptcy Trustee to assume or reject the Subcontract and to provide the required adequate assurances of

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Subcontractor's continued ability to perform the Subcontract, Contractor may employ any and remedies hereunder as Contractor deems reasonably necessary to assure the timely and continued performance of the Subcontract in order to maintain the Project Schedule and completion of Contractor's obligations under its Contract with Owner, and any and all costs, damages and expenses so incurred by Contractor shall be subject to the provisions of Paragraphs 11.3 and 11.4 hereof.

11.6 Should Subcontractor default in any of the provisions of the Subcontract and should Contractor employ an attorney to advise Contractor on its rights and remedies under the Subcontract or to enforce any provision hereof, regardless of whether formal dispute resolution proceedings are undertaken, or to collect damages for breach of the Subcontract or to recover on any bond required hereunder, Subcontractor and/or its surety agree to pay Contractor its attorney fees expended therein. Wherever in the Subcontract Subcontractor agrees to pay expenses incurred by Contractor such expenses shall include, but are not limited to, attorney fees incurred by Contractor. As against the obligations herein contained Subcontractor and its surety waive all rights of exemption. Attorney fees and legal costs shall be in addition to the penal amount of the bond should Contractor sue for collection more than ninety (90) days after presentation of a claim against the bond.

ARTICLE 12 MISCELLANEOUS PROVISIONS

12.1 Subcontractor agrees that it is, or prior to the start of the Work hereunder will become, an independent contractor and an employing unit subject as an employer to all applicable unemployment compensation statutes so as to relieve Contractor of any responsibility or liability for treating Subcontractor's employees as employees of Contractor for the purpose of keeping records, making reports and payment of unemployment compensation taxes or contributions; and Subcontractor agrees to indemnify and hold Contractor harmless and reimburse it for any expense or liability incurred under said statutes in connection with employees of Subcontractor, including a sum equal to benefits paid to those who were Subcontractor's employees, where such benefit payments are charged to Contractor under any merit plan or to the individual reserve account pursuant to any state unemployment compensation statute.

12.2 No action or failure to act by the Owner, Contractor or Architect shall constitute a waiver of any right or duty afforded any of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing. Contractor's right to require strict performance of the Subcontract shall not be affected by any previous waiver or course of dealings. Permitting Subcontractor to continue after the date of scheduled completion shall not be construed as a waiver of any such claim or damages or increased costs due to delays.

12.3 Every provision of the Subcontract is intended to be severable such that, if any term or provision hereof is illegal or invalid for any reason whatsoever, such provision shall be severed from the Subcontract and shall not affect the validity of the remainder of the Subcontract.

12.4 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation or Subcontractor's authorized representative for whom it was intended, or if delivered at or sent by registered or certified mail, or if transmitted and received by facsimile telephone transmission (FAX), to the last business address or fax telephone number known to him who gives the notice.

12.5 Should either party to the Subcontract suffer injury or damage to person or property (other than to the Work) because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, claim shall be made in writing to such other party within ten (10) days after the injury or damage was made known to the party making claim. This Paragraph shall not apply to injury or damage to property caused by or resulting from breach of warranty or duty to correct defective work as provided in Article 7.

12.6 Subcontractor may not assign, transfer or sublet all or any portion of the Subcontract or the right to receive any payment hereunder without first obtaining written consent of Contractor. In no case shall the letting of any subcontract by Subcontractor relieve Subcontractor of its liability and obligations under the Subcontract. Subcontractor acknowledges the right of Contractor to assign all or any portion of the Subcontract to Owner or other third party as may be provided by the Contract Documents. Contractor shall furnish written notice of such assignment to Subcontractor and upon Subcontractor's receipt thereof, the assignee shall succeed to the rights and obligations of Contractor under the Subcontract and under any surety bond furnished by Subcontractor, without recourse by Subcontractor against Contractor, except as such notice of assignment may otherwise provide.

12.7 Nothing set forth and contained in this Subcontract creates an agency relationship by and between Contractor and Subcontractor whereby Subcontractor has actual, implied or apparent authority, rights, duties or powers to act for or on behalf of Contractor, or otherwise to bind or commit Contractor to any third party, without the express, prior written approval and notice from Contractor to such third party. Furthermore, nothing set forth and contained in this Subcontract shall create or establish any relationship or obligations between Contractor and any of Subcontractor's employees, sub-subcontractors, material suppliers or equipment lessors. Such parties are not third party beneficiaries of this Subcontract, and it is Contractor's express intent that no such third party beneficiary rights be conferred upon such parties.

12.89 The Subcontract shall be governed by the laws of the State of Wisconsin.

12.9 All dates expressed in the Subcontract or set forth in any notice given by Contractor under the terms of the Subcontract are of the essence of the Subcontract.

12.10 KOTECKI WAIVER



Subcontract

To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Performance Services, Inc. and all of its agents and employees from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance or failure in performance of the Subcontractor's work under this agreement provided that any such claim, damage, loss, or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, (2) is caused, in whole or in part, by any negligent act or omission of the Subcontractor or anyone directly or indirectly employed by the Subcontractor, or anyone for whose acts the Subcontractor may be liable, regardless of whether caused in part by a party indemnified hereunder. In any and all claims against Performance Services, Inc., or any of its agents or employees, by any employee of the Subcontractor, or anyone directly or indirectly employed by the Subcontractor, or anyone for

whose acts the Subcontractor may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Subcontractor under Worker's Compensation Acts, disability benefit acts, or other employee benefit acts.

ARTICLE 13

ADDITIONAL PROVISIONS