



CALUMET JOB NO.: «Job\_»

Calumet Civil Contractors, Inc.

SUBCONTRACT AGREEMENT

THIS AGREEMENT, made «Day\_of», under Indiana Law, by and between CALUMET CIVIL CONTRACTORS, INC., an Indiana Corporation, (hereinafter called CONTRACTOR), and «Subcontractor» of «Sub\_Address» (hereinafter called SUBCONTRACTOR).

WITNESSETH:

DESCRIPTION OF WORK

ARTICLE I. The Subcontractor shall furnish all necessary labor, materials, tools, equipment, supplies and supervision necessary to perform, and shall perform the work generally described as:

<i>Bid Item</i>	<i>Description</i>	<i>Quantity</i>	<i>Unit Price</i>	<i>Total</i>
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TOTAL ..... \$

EXHIBITS attached to this Subcontract and made a part hereof include:

Exhibit A - Scope of Work
Exhibit B - Wage Determination Rates
Exhibit F - Subcontractor Affidavit, Verified List of Subcontractors and Suppliers, Partial Waiver and Release of Lien (Progress Payment Request)
Exhibit F-1 - Subcontractor Affidavit, Final Waiver and Release of Lien (Final Payment Request)

(hereinafter called the Work), for and at the location of Contract No. «Contract\_» of the «Owner» (hereinafter called Owner), located at «Work\_Address» as shown on the Plans and/or called for in the Specifications prepared by «Plans\_prepared\_by» (hereinafter called Architect), in accordance with the terms and provisions of the Contract let «Let\_Date» between Owner and Contractor, it being understood and agreed that all of the Plans, Specifications, General Conditions and Provisions forming, or by reference, made a part of Contract between Contractor and Owner shall be considered and hereby are made a part of this Subcontract by this reference thereto and Subcontractor represents that he is familiar with, and agrees to be bound to, Contractor by the terms and provisions thereof.

**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 this Subcontract and Exhibits listed or referred to herein and any and all other documents which form or govern the Agreement between the Contractor and Owner ("Contract"). The Contract Documents include, without limitation, General, Supplementary and other Conditions of the Contract, Drawings, Plans, Specifications, the Project Manual, accepted alternates, all Addenda issued prior to execution of this Subcontract, schedules, and all Modifications (including Change Orders and/or Change Directives as hereinafter described) issued subsequent hereto. All of the Contract Documents are part of this Subcontract and have been made available by Contractor for inspection by Subcontractor and remain available to Subcontractor, upon written request, from the Contractor's Project Manager. The Contract Documents do not include any proposal or other submission furnished by Subcontractor prior to the date hereof, unless separately accepted and acknowledged as such by Contractor in writing. 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, duties, risks, procedures, requirements and responsibilities that Contractor by those instruments assumes toward Owner or other third parties. Subcontractor further agrees that Contractor shall, in addition to any greater rights and remedies provided by this Subcontract, have the same rights and remedies against Subcontractor that Owner or any other third party has against Contractor under the Contract Documents or applicable law.

1.2 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.

1.3 This Subcontract and the other Contract Documents shall be read to complement each other. 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. Contractor's determination of the Subcontract requirements in light of the error, inconsistency, omission or ambiguity shall be final and Subcontractor shall perform the Work consistent with that determination. 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. In the event of an irreconcilable conflict between the terms of this Subcontract and terms stated in any other of the Contract Documents, the terms of this Subcontract shall govern. In all other circumstances of irreconcilable conflict or ambiguity within or among the Contract Documents, the terms which give greater rights to the Contractor or impose more extensive qualitative or quantitative obligations on Subcontractor shall govern.

## **ARTICLE 2 PAYMENT**

2.1 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.

2.2 The Subcontract Amount for the Work is based on unit prices and quantities actually placed and accepted. The Subcontract Amount includes, and Subcontractor shall be responsible for the prompt payment of, all charges and costs imposed, incurred or payable without limitation for the materials, machinery, equipment and labor used in or furnished in connection with the performance of the Work. 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. 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.

2.3 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 as required by the Contract, if any, or such higher percent retainage as Owner may withhold from Contractor under the Contract, which Contractor may withhold from payments due Subcontractor.

2.4 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 Contract, if any, 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 amount 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.

2.5 Subcontractor shall submit all applications for payments, with sufficient breakdown data to permit checking and approval, and upon forms and with accompanying documentation acceptable to Contractor. Subcontractor's application shall be submitted on or before the 20<sup>th</sup> 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.

2.6 Payments shall not become due to Subcontractor unless and until Contractor first 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 after deducting Contractor's profit and overhead margin; 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 any duty or obligation of the Contractor or its surety to pay Subcontractor and Subcontractor accepts such risk including without limitation, the risk of the Project Owner's solvency. Once such payment has been received by Contractor for Subcontractor's Work Contractor shall submit to Subcontractor on or before the 30<sup>th</sup> day of the following month 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 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 or its surety. Subcontractor waives any right to demand or receive any progress, final or retainage payments sooner or in greater amounts than provided herein.

2.7 Notwithstanding any other provision for interest in the 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 five percent (5%) per annum from the date payment is otherwise due and owing.

2.8 Final payment of the unpaid balance of the Subcontract Amount shall not become due until ninety one (91) days following the date of Substantial Completion of the overall Project as determined under the Contract Documents, and not before Architect's issuance of the Certificate for Final Payment to Contractor 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 drawings, 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 or will be paid in full out of such final payment, (iv) Subcontractor has delivered to Contractor all required submittals, (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.

2.9 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.

### **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. 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 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.

3.4 If 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, 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 seventy-two (72) 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 6 of this Subcontract.

3.5 It is acknowledged that Subcontractor's failure to achieve substantial and final completion of the Work within the individually specified dates specified in the Contract and/or 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, 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.

3.6 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 therefore. 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. Except in the isolated case and circumstance where Contractor has elected, at its sole option, to present to Owner as part of a Contractor claim for delays and hindrances to Contractor any passed through costs and damages incurred by Subcontractor for such delays and hindrances, and recovered thereon from the Owner on the Subcontractor component of Contractor's claim as a part of Contractor's overall costs and damages, in which event Contractor agrees to share such Subcontractor component of the claim recovery with Subcontractor, net after deducting all of Contractor's costs and expenses, including legal and expert fees and costs, in developing, presenting and prosecuting such claim for and on Subcontractor's behalf, Subcontractor shall not be entitled to recover and hereby unconditionally waives any right to make any claim for any damages or monetary relief for or in connection therewith, regardless of the circumstances, extent or duration of any adverse impacts thereof, any and all such circumstances and consequences being within the contemplation of the parties.

3.7 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 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 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 LIABILITY FOR DAMAGE AND PERSONAL INJURY**

4.1 Subcontractor hereby assumes entire responsibility and liability in and for any and all damage or injury of any kind or nature whatever to all persons and to all property growing out of or resulting from the act or omission of the Subcontractor in the performance of the Work provided for in this Subcontract. Subcontractor is an Independent Contractor in the performance of this Subcontract and shall provide and maintain Worker's Compensation Insurance for the protection of its employees, as required by law. It shall provide and maintain public liability insurance for personal injury, including death, suffered by persons other than employees, which may arise from operations under this Subcontract and also shall provide and maintain property damage insurance coverage and insurance to cover its liability under this Subcontract. Such insurance coverages shall be in the greater amount of one of the following: (a) as required in the General Conditions of the Prime Contract, or (b) as shown below under "Type of

Insurance Coverages Required". Subcontractor and all of their tiers of subcontractors shall furnish, before commencing any work, all insurance certificates, statutory workers' compensation certificates, and bonds required by the specifications. Subcontractor shall make sure that all insurance continuation certificates are in our office before the expiration of any coverage. We reserve the right to withhold payment under this subcontract until evidence coverage not less than specified hereafter.

SUBCONTRACTOR/VENDOR INSURANCE REQUIREMENTS

COVERAGE	LIMITS
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I. <u>COMMERCIAL GENERAL LIABILITY</u>	\$1,000,000 Each Occurrence \$2,000,000 Aggregate
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POLICY TO BE ENDORCED TO PROVIDE:

1. Calumet Civil Contractors, Inc. and any other contractually required entities as additional insureds, including coverage for Completed Operations.
2. Waiver of Subrogation in favor of Calumet Civil Contractors, Inc. and its Insurers.
3. Subcontractor's/Vendor's insurance as primary and non-contributory.
4. Deletion of the Exclusions of coverage for the "XCU" (Explosion, Collapse, and Underground) exposures.
5. A Per Project and Per Location Aggregate.

II. <u>BUSINESS AUTOMOBILE LIABILITY</u>	\$ 1,000,000 Each Accident
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POLICY TO BE ENDORCED TO PROVIDE

1. Calumet Civil Contractors, Inc. and any other contractually required entities as additional insureds.
2. Liability coverage for all owned, non-owned and hired automobiles.
3. Waiver of Subrogation in favor of Calumet Civil Contractors, Inc. and its Insurers.
4. Subcontractor's/Vendor's insurance as primary and non-contributory.
5. Policy is to contain the MCS-90, Motor Carrier Safety Act of 1980 Endorsement.

II. <u>BUSINESS AUTOMOBILE LIABILITY – HAZARDOUS WASTE/MATERIALS HAULERS (IF APPLICABLE)</u>	\$ 5,000.000 Each Accident
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POLICY TO BE ENDORCED TO PROVIDE:

1. Calumet Civil Contractors, Inc. and any other contractually required entities as additional insureds.
2. Liability coverage for all owned, non-owned and hired automobiles.
3. Waiver of Subrogation in favor of Calumet Civil Contractors, Inc. and its Insurers.
4. Subcontractor's/Vendor's insurance as primary and non-contributory.
5. Policy is to contain the MCS-90, Motor Carrier Safety Act of 1980 Endorsement.
6. Policy is to provide Pollution Liability Coverage.

IV. WORKER'S COMPENSATION & EMPLOYER'S LIABILITY

COV. A – WORKER'S COMPENSATION	STATUTORY
COV. B – EMPLOYER'S LIABILITY	\$ 1,000,000 Each Accident
	\$ 1,000,000 Disease – Each Employee
	\$ 1,000,000 Disease – Policy Limit

POLICY TO BE ENDORCED TO PROVIDE:

1. Waiver of subrogation in favor of Calumet Civil Contractors, Inc. and its Insurers.
2. Coverage to be valid in All States covered by Contract.

V. UMBRELLA LIABILITY

\$ 5,000,000 Each Occurrence  
\$ 5,000,000 Aggregate

POLICY TO BE ENDORCED TO PROVIDE:

1. "Follow Form" Coverage (Including Coverage Enhancements) on the General, Automobile and Employer's Liability Policies.

VI. CONTRACTOR'S POLLUTION LIABILITY  
(IF APPLICABLE)

\$ 5,000,000 Each Incident  
\$ 5,000,000 Aggregate

1. Calumet Civil Contractors, Inc. and any other contractually required entities as additional insureds.
2. Waiver of Subrogation in favor of Calumet Civil Contractors, Inc. and its Insurers.
3. Subcontractor's/Vendor's insurance as primary and non-contributory.

VII. POLLUTION LEGAL LIABILITY-TREATMENT AND DISPOSAL FACILITIES  
(IF APPLICABLE)

\$ 5,000,000 Each Incident  
\$10,000,000 Aggregate

1. Coverage is to be provided for both Sudden, Non-Sudden, and Accidental Pollution incidents via a separate policy(ies).

VIII. PROFESSIONAL LIABILITY  
(IF APPLICABLE)

\$ 5,000,000 Each Incident  
\$ 5,000,000 Aggregate

APPLICABLE TO ALL POLICIES:

Subcontractor/Vendor shall maintain Insurance Policies comparable in coverage and limits (at the minimum) to the above listed requirements or those required by Calumet Civil Contractors, Inc., whichever provides greater coverages, limits or enhancements. The referenced policies shall provide such coverage to fulfill Subcontractor's/Vendor's obligations with regard to the indemnification requirements contained in this document and any claim, damage, loss, or expense described in this contract. Liability Insurance shall be carried on an occurrence basis.

Additional Insured status shall include Calumet Civil Contractors, Inc. and all entities required by the contract and the respective officers, directors, consultants, agents and employees of each. Prior to commencing work, and in no event later than 14 days after execution of the contract, Subcontractor/Vendor shall deliver a Certificate of Insurance from Insurance Company(ies) acceptable to Calumet Civil Contractors, Inc. Said Certificate shall confirm compliance with ALL Insurance requirements and shall stipulate that no cancellation or non-renewal of any of the required policies shall be effective until thirty (30) days written notice to Calumet Civil Contractors, Inc.

The amounts of insurance (including endorsements thereto) carried in compliance with these requirements are not to be construed as either a limitation or satisfaction of the Subcontractor's /Vendor's liability.

## **ARTICLE 5 INDEMNIFICATION**

5.1 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 Indiana Anti-Indemnity Statute, as codified at Indiana Code, §26-2-5-1.

5.2 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 5.1 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.

5.3 The obligations of Subcontractor under Paragraph 5.1 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 (i) the preparation or approval by Architect, its agents or employees of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (ii) 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.

5.4 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.

5.5 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 6 DEFAULT AND TERMINATION**

6.1 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 6.2; 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 6.4 hereof.

6.2 If Subcontractor (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 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.

6.3 In the event that Contractor shall elect to proceed as provided under Paragraph 6.2 (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 6.2 (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.

6.4 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.

6.5 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 Subcontractor's continued ability to perform the Subcontract, Contractor may employ any 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 6.3 and 6.4 hereof.

6.6 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 and consultant fees and expenses expended therein. Wherever in the Subcontract Subcontractor agrees to pay expenses incurred by Contractor such expenses shall include, but are not limited to, attorney and consultant fees and expenses incurred by Contractor. As against the obligations herein contained Subcontractor and its surety waive all rights of exemption. Attorney and consultant fees and legal costs shall be in addition to the penal amount of the bond should Contractor sue for collection more than sixty (60) days after presentation of a claim against the bond.

## **ARTICLE 7 CHANGES**

7.1 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.

7.2 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 seven (7) 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's Change Order Request shall include documentation sufficient to enable Contractor to determine the factors necessitating the adjustment being requested, including those requirements set forth in Paragraphs 7.7 and 7.8 hereof, and otherwise shall meet the requirements of the Contract if the change was originally initiated by Owner to Contractor thereunder. Compliance by Subcontractor with the notice and change request submission requirements herein shall be a condition precedent to Subcontractor's entitlement to a Subcontract adjustment and Subcontractor waives and releases any claim for additional compensation or an extension of time that does not meet such requirements. If Contractor decides to proceed with the change and a Subcontract adjustment is warranted, or an adjustment is warranted in connection with Subcontractor's Work as provided in Paragraph 7.6 hereof, Contractor shall issue a written Change Order to Subcontractor adjusting the Subcontract either: (i) as requested by Subcontractor; or (ii) in the event the Contractor disagrees with Subcontractor's statement as to the effect of the change, Contractor shall issue a Change Order to Subcontractor on terms Contractor reasonably deems appropriate. Subcontractor shall, provided a written order or directive signed by Contractor is issued to it, promptly proceed with the Work involved in any change.

7.3 In the event Contractor issues a Change Order to Subcontractor under Paragraph 7.2 above or 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. Subcontractor shall have no right to suspend or delay the performance of its obligations under the Subcontract while the Contractor is reviewing Subcontractor's change request or if Subcontractor disagrees with the Change Order issued by Contractor. If Contractor and Subcontractor do not agree as to the appropriate adjustment to the Subcontract Amount and/or Subcontractor's time for performance in connection with a change, Subcontractor shall provide to Contractor the information and documents required in connection with changes performed on other than a lump sum basis to support its additional costs and information and documents to support its request for a

time extension. When the change has been completed, Contractor shall determine the appropriate adjustment to the Subcontract Price and/or Subcontract Time for performance as provided above in Paragraph 7.2. That decision shall be binding on Subcontractor unless Subcontractor timely notifies the Contractor in writing that it disputes the decision within the time requirements of Paragraph 7.6. If Subcontractor properly disputes the decision, the matter shall be subject to dispute resolution under Article 13.

7.4 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.

7.5 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. If Subcontractor previously proceeded with the change at Contractor's written direction, Subcontractor shall be entitled to a Change Order adjusting the Subcontract if warranted to the extent the Change was implemented.

7.6 Except as otherwise provided by Paragraph 7.2 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 fourteen (14) days after the first occurrence of the event giving rise to such claim, or (ii) at least fourteen (14) 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 events or facts 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. Furthermore, in the event Subcontractor asserts any frivolous claim against Contractor (or submits a Subcontractor adjustment request that has no substantial merit or that is based in whole or in part upon materially inaccurate assertions), Contractor shall be entitled to collect from Subcontractor by offset or otherwise any and all costs and expenses, including but not limited to attorney and expert fees and expenses, incurred by Contractor in investigating, responding to, defending against and resolving such claim or request. 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.

7.7 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 and wage scale. In no case shall Subcontractor's

compensation for changes in the Work or other claims include mark up for profit and overhead in excess of such mark up as may be provided in the Contract Documents for Subcontractor's Work.

7.8 Subcontractor shall, with respect to 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.

7.9 As with change directives or change orders issued by Contractor to Subcontractor as set forth and described in Paragraphs 7.2 and 7.3, if Owner, Contractor or Architect disputes the validity or amount of a claim submitted by Subcontractor under Paragraph 7.6 above, 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 under Article 13.

7.10 Only representatives 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 8 PERMITS AND RESPONSIBILITY**

8.1 Subcontractor without expense to Contractor shall obtain all required licenses, permits, inspection and registrations and shall obey and abide by all applicable laws, regulations, ordinances, and other rules of the United States of America, of the State or political subdivision thereof where the work is performed, or of any other duly constituted public authority as applicable to the Subcontract.

8.2 Except as otherwise stated herein, Subcontractor shall be responsible for all materials delivered and work performed until completion and final acceptance. All work shall be delivered complete and undamaged.

## **ARTICLE 9 ADMINISTRATION AND SUPERVISION OF THE WORK**

9.1 Subcontractor shall, at all times, furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision and superintendency of all Work required under the Subcontract.

9.2 Subcontractor agrees to have, at all times, a representative at the site of the Work with full responsibility for the prosecution of the Work, and with full authority to act on behalf of Subcontractor in all matters necessary for proper coordination, direction and technical administration of the Work, and such representative shall attend meetings, at such times and places as shall be determined by Contractor, to render reports on the progress of the Work. Instructions, directives and orders issued to this representative shall be binding upon Subcontractor. Such information, instructions, directions and orders

may be confirmed in writing to Subcontractor, but the lack of such confirmation shall not affect in any way the validity or binding nature of such information, instructions, directions or orders issued.

## **ARTICLE 10 EQUAL EMPLOYMENT OPPORTUNITY**

10.1 Unless exempt, the Subcontractor shall, at its own expense, comply with the Equal Employment Opportunity policy of the Contractor and all federal, state and local statutes, ordinances and regulations, as may be amended from time to time, dealing with equal employment opportunity, including, without implied limitation, the applicable requirements of:

Federal and state civil rights acts, the Equal Pay Act, Age Discrimination in Employment Act, the Americans with Disabilities Act, Family and Medical Leave Act and Executive Orders issued to implement Federal Equal Employment Opportunity Policy; and

All standards and regulations which have been or shall be promulgated by the parties or agencies administering any of the foregoing statutes, regulations or orders found in Subparagraph above (herein collectively referred to as EEO laws).

10.2 Unless exempt, the Subcontractor agrees that, if the Contract Documents involve a federally-assisted construction contract, the following documents, which are attached to and made a part of this Subcontract, will be physically attached to and made a part of all of the Subcontractor's subcontracts and purchase orders in excess of \$10,000:

“Standard Equal Employment Opportunity Clause” [41 CFR 60-1.4(b)].

“Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)” [41 CFR 60-4.3].

**If the federal assistance is being administered by the Federal Highway Administration**, FHWA's “Required Contract Provisions, Federal-Aid Construction Contracts” (FHWA-1273) [23 CFR 633.102(e)].

## **ARTICLE 11 SAFETY**

11.1 Subcontractor shall, at its own expense, conform to the Safety Policy of Contractor and comply with all applicable specific requirements promulgated by any governmental authority, including, without implied limitation, the applicable requirements of the Occupational Safety and Health Act of 1970, and the Construction Safety Act of 1969.

Subcontractor will take all precautions which are necessary to protect against any conditions created during the progress of Subcontractor's activities which involve any risk of bodily harm to persons or a risk of damage to any property. Subcontractor shall continuously inspect the Work, materials and equipment to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such conditions which affect the safety and health of employees.

11.2 Subcontractor, in signing this Agreement, represents that it has studied all of the OSHA Safety and Health Regulations for Construction, and further, Subcontractor agrees that it will observe such regulations and be liable for any violation thereof by Subcontractor and/or its agents or employees. Subcontractor further agrees that, in the event that an action is undertaken against Contractor for violations created by Subcontractor or its subcontractors, regardless of tier, Subcontractor shall become

responsible for all costs or damages assessed related to this action, including attorney's fees incurred in the defense or appeal of such action.

11.3 Subcontractor shall deliver from itself and from all subcontractors or vendors copies of all accident and injury reports within twenty-four (24) hours of occurrence, resumes of all Safety Programs, and any other reports concerning safety as may be requested.

11.4 Subcontractor shall have on the Jobsite at all times while Work is being performed a designated Safety Representative who shall be empowered to act on behalf of Subcontractor in all matters pertaining to safety.

11.5 Subcontractor shall furnish a written notice of the appointment of the safety designee to Contractor.

## **ARTICLE 12 LABOR RELATIONS**

12.1 In the prosecution of the Work, Subcontractor agrees to recognize and comply with all agreements of Contractor with local trade councils and/or separate unions concerning labor and working conditions applicable to Work, insofar as these agreements do not conflict with or violate any local, state or federal laws or properly constituted orders or regulations pertaining to this Project. Subcontractor agrees to abide by the decision of the Impartial Jurisdictional Disputes Board of the Construction Industry Plan for Settlement of Jurisdictional Disputes and its successors, in the event of a jurisdictional labor dispute. Subcontractor agrees to pay not less than the scale of wages provided in the Contract Documents, or not less than the scale prescribed by law in case the Contract Documents provide no such scale. If Subcontractor fails to comply with this Article, Contractor shall have the option to terminate the Subcontract forthwith, in addition to exercising any or all other rights given Contractor hereunder in the event of a breach of the Subcontract, including, but not limited to, the collection from Subcontractor of all damages and penalties provided for in the Contract. Certified copies of payrolls will be submitted to Contractor when requested. Subcontractor acknowledges that it will comply with the applicable laws in relation to wages and hours, reporting obligations, and other labor requirements established by the Contract Documents.

12.2 Subcontractor shall maintain and exercise control over all employees engaged in the performance of the Work; provided, however, Subcontractor shall remove or cause to be removed from Jobsite any employee whose presence is determined by Contractor to be detrimental to the efficient and timely completion of the Work required by the Contract Documents. Subcontractor shall not employ any person or engage in any activities which cause, or are likely to cause, a strike, work stoppage or other similar concerted labor action.

12.3 In the event of strike or picket disturbance as a result of labor furnished or work performed by Subcontractor, Contractor shall, at its option, have the right, after forty-eight (48) hours notice to Subcontractor, to take necessary steps to complete the Work. Should there be picketing and should Contractor establish a reserved gate for Subcontractor's use, it shall be the obligation of Subcontractor to continue with the Work without interruption or delay.

## **ARTICLE 13 DISPUTE RESOLUTION**

13.1 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 mediation, 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.

13.2 All claims, disputes and other matters in controversy arising out of or related to the Subcontract, or the performance or breach thereof, may be decided by arbitration, at the sole option of Contractor. If Contractor elects arbitration, then it shall be mandatory upon Subcontractor. Such arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to modifications set forth herein, or, at Contractor's option, an arbitration tribunal other than the American Arbitration Association may be selected to administer the arbitration. The arbitration award issued in such arbitration shall be final and binding on the parties, and may be submitted to a court of competent jurisdiction for entry as a judgment of such court as provided therein. In addition to the arbitration being subject to the Construction Industry Arbitration Rules of the American Arbitration Association then in effect, any arbitration proceedings, at Contractor's option, shall be subject to the statutory provisions of the Indiana Uniform Arbitration Act, as codified in Title 34 of the Indiana Code, §34-57-2-1, *et seq.* The arbitrators shall have all powers granted to arbitrators under that statute.

13.2.1 This Paragraph shall not be construed to require Contractor under any circumstances to submit to arbitration any claim, dispute or other matter involving, arising from or giving rise to (i) a claim by or against the Owner or other third party unless the 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, (iii) claims which have been waived by the making or acceptance of final payment as provided by Paragraph 2.9, or (iv) costs or damages sustained or claimed by Subcontractor because of delay, 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.

13.2.2 If arbitration is selected by Contractor, the arbitrator may decide only the issues presented to him 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.

13.2.3 This Subcontract, and all matters arising out of or relating to it, shall be governed by and construed in accordance with the laws of the State of Indiana. Subject to the provisions of Paragraph 13.2, for any action or proceeding involving any controversy, claim or dispute arising out of or in connection with the Subcontract or the Work performed thereunder that Contractor does not elect to arbitrate, Contractor and Subcontractor expressly and unconditionally (a) agree that the forum for any legal or equitable action or proceeding shall be, at Contractor's sole option, either in the Boone County, Indiana or the County where Contractor has a branch office in Indiana, the County where the Project is located, or in the United States District Court for the Southern District of Indiana, Indianapolis Division, and that such courts shall have sole and exclusive jurisdiction over the action or proceeding, unless agreed to otherwise, in writing, by Contractor; and (b) waive the right to a trial by jury in the action or proceeding. If arbitration is selected by Contractor, then venue for such arbitration proceedings shall be in Indianapolis, Marion County, Indiana, and any hearing or conference shall take place in that locale. The arbitration proceedings also shall be governed by the laws of the State of Indiana. Subcontractor consents to the choice of law, the choice of dispute resolution elected by Contractor, venue as provided herein, and to

personal jurisdiction over it as provided herein, and waive any right to object to the exercise of personal jurisdiction by these tribunals or courts and to exclusive venue in these locales.

13.3 As a condition precedent to arbitration, the Contractor may require that any claim, dispute or controversy arising out of or relating to this Agreement or the breach thereof first be submitted to non-binding mediation administered by the American Arbitration Association (AAA) or other organization if agreed to by the parties pursuant to the Construction Industry Mediation Rules then in effect.

13.4 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 to work under such circumstances shall constitute a default under the Subcontract as provided in Article 6 hereof.

13.5 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, fees and expenses associated with the negotiation, settlement, arbitration, litigation or other means undertaken to resolve such matter, including attorney and consultant fees and related expenses. 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.

13.6 In any instance whereby Contractor is entitled, under the terms of this Subcontract, to be indemnified by or recover any moneys from Subcontractor, or Contractor is required to enforce any term or condition of this Subcontract, Contractor shall be entitled, in addition, to recover from Subcontractor (i) interest on any sums due from Subcontractor at the rate of ten percent (10%) 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 fees incurred by Contractor for all investigation, negotiation, litigation, arbitration and other such services commonly performed by attorneys.

#### **ARTICLE 14 WARRANTY AND CORRECTION OF DEFECTS**

14.1 Subcontractor warrants to Owner and Contractor 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. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. Subcontractor agrees to indemnify and hold Owner and Contractor 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 and Contractor 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.

14.2 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 costs and 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 by Owner, 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.

14.3 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.

14.4 Nothing contained in this Article shall be construed to establish a period of limitation with respect to obligations of Subcontractor under this Subcontract. Paragraph 14.2 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 14.1 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.

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

## **ARTICLE 15 MISCELLANEOUS PROVISIONS**

15.1 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.

15.2 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.

15.3 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.

15.4 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.

15.5 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 14.

15.6 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. Neither the Subcontract nor any sub-subcontracts or material supply agreements shall create any contractual relationship between any sub-subcontractors or material suppliers and Contractor or Owner, nor any third party beneficiary rights or remedies with any sub-subcontractors or material suppliers, nor any payment or other obligations on the part of either Contractor or Owner to such sub-subcontractors or material suppliers.

15.7 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.

15.8 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.

15.9 The Subcontract, and all matters arising out of or relating to it, shall be governed by and construed in accordance with the laws of the State of Indiana. Venue and the forum for any action or proceeding involving this Subcontract shall be decided in Boone County, Indiana, unless otherwise mutually agreed.

15.10. Subcontractor daily shall clean and remove from the jobsite and premises any dirt and debris caused by the performance of the Work included in this Subcontract and unless otherwise expressly provided herein, upon completion of the Work shall clean, wash, remove protective coatings, etc. and shall leave the Work in a clean and acceptable condition. Should Subcontractor fail to perform such clean-up or fail to accomplish any corrective work required by Contractor to Subcontractor's work to the

satisfaction of Contractor, Contractor shall provide such clean-up services and such corrective work on behalf of Subcontractor and Subcontractor agrees to reimburse Contractor for such costs incurred plus 10%.

15.11 Subcontractor shall coordinate his operations with all other trades having work in the same area of the project. Before commencing work he will report in writing to Contractor any defective prior work by others which would prevent proper completion of his own work. Adequate advance notice shall be given Contractor's superintendent to assure an opportunity by other trades to accomplish work which must precede or build into the work under this Subcontract.

15.12 If the Owner requires approval of the Subcontractor, the Subcontractor agrees and acknowledges that this Subcontract shall not be valid until written approval is received from the Owner.

15.13 This Subcontract, together with the documents referred to herein, represents the entire Agreement between the parties. There are no agreements, understandings, inducements or representations, oral or otherwise, leading up to or inducing the execution of this Subcontract which are not contained herein. This Subcontract may not be modified except by a writing signed by both parties hereto.

IN WITNESS WHEREOF, Contractor and Subcontractor have executed this agreement the day and year first above written.

*«Subcontractor»*

*CALUMET CIVIL CONTRACTORS, INC.*

By \_\_\_\_\_

By \_\_\_\_\_

Print Name \_\_\_\_\_

<PM Name>

Title: \_\_\_\_\_

Title: Project Manager

Subcontractor: «Subcontractor»

Subcontract Agreement Dated: «Day\_of»

EXHIBIT A – Scope of Work

The Subcontractor shall furnish all necessary labor, materials, tools, equipment, supplies and supervision necessary to perform, and shall perform the work generally described as:

<i>Bid</i>				
<i>Item</i>	<i>Description</i>	<i>Quantity</i>	<i>Unit Price</i>	<i>Total</i>
TOTAL .....				\$

Contract: «Contract\_\_»

ATTACHMENT CM 32-34

CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS

The bidder / proposed subcontractor (circle one), hereby certifies that it has / has not (circle one), participated in a previous contract or subcontract subject to the Equal Opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that it has / has not (circle one), filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or Administering agency, or the former President’s Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

«Subcontractor»  
\_\_\_\_\_  
(Company)  
\_\_\_\_\_  
(By)  
\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

The above certification is required by the Equal Employment Opportunity Regulations to the Secretary of Labor (41 CFR 601.7 (b) (1)). This certification shall be submitted by bidders and proposed subcontractors only in connection with contracts and subcontractors which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from, the equal opportunity clause are set forth in 41 CFR 601.5. Generally only contracts or subcontracts of \$10,000 or under are exempt.

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Pursuant to 41 CFR 60-1.7 (b) (1), proposed contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders listed above and have not filed the required reports, shall not be awarded contracts and subcontracts unless such contractor or subcontractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director’s Office of Federal Contract Compliance U.S. Department of Labor.



**Calumet Civil Contractors, Inc.**

4898 Fieldstone Drive

Whitestown, Indiana 46075

Telephone: (317) 769-1900

Facsimile: (317) 769-7424

**SUBCONTRACTOR AFFIDAVIT, PARTIAL WAIVER AND RELEASE OF LIEN**

*(For use with periodic progress payment applications)*

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, SS:                      Date: \_\_\_\_\_

TO:

Owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project No.: \_\_\_\_\_

Pay Request No.: \_\_\_\_\_

Architect: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contractor:            **Calumet Civil Contractors, Inc.**  
                             **4898 Fieldstone Drive**  
                             **Whitestown, Indiana 46075**

Project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subcontractor \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subcontract No.: \_\_\_\_\_

Subcontract Date: \_\_\_\_\_

Subcontract Scope of Work: \_\_\_\_\_

The undersigned, being duly sworn, deposes, certifies and says that: (i) he (she) is an officer of, and is duly authorized to make this Subcontractor Affidavit, Partial Waiver And Release of Lien on behalf of the above-named Subcontractor; (ii) Subcontractor has contracted with Contractor to furnish certain labor and/or materials as follows: \_\_\_\_\_, for the above Project; (iii) the current balance due from Contractor for labor performed and material furnished to said Project is the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_); (iv) Subcontractor has received all payments due to date under its Subcontract referred to above ("Subcontract"), less applicable retention; (v) Subcontractor has paid in full or otherwise satisfied all of its obligations to its subcontractors, materialmen, equipment suppliers, vendors, laborers, and employees for all labor performed, materials and equipment furnished, and services rendered to the Project up to and including the date hereof, and has paid or otherwise satisfied all other claims and indebtedness associated with the performance of the Subcontract, up to and including the date hereof; and (vi) no other party has any claim, or right to a lien on account of any work performed, materials or equipment furnished, or services rendered for said Project under the Subcontract.



**Calumet Civil Contractors, Inc.**  
4898 Fieldstone Drive  
Whitestown, Indiana 46075  
*Telephone: (317) 769-1900*  
*Facsimile: (317) 769-7424*

**SUBCONTRACTOR AFFIDAVIT, FINAL WAIVER AND RELEASE OF LIEN**  
*(For use with final payment applications)*

**STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, SS:                      Date: \_\_\_\_\_**

**TO:**

**Owner:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Project No.:** \_\_\_\_\_  
**Pay Request No.:** \_\_\_\_\_

**Architect:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Contractor:**       **Calumet Civil Contractors, Inc.**  
                          **4898 Fieldstone Drive**  
                          **Whitestown, Indiana 46075**

**Project:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Subcontractor:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Subcontract No.:** \_\_\_\_\_  
**Subcontract Date:** \_\_\_\_\_

**Subcontract Scope of Work:** \_\_\_\_\_

The undersigned, being duly sworn, deposes, certifies and says that: (i) he (she) is an officer of, and is duly authorized to make this Subcontractor Affidavit, Final Waiver and Release of Lien on behalf of the above-named Subcontractor; (ii) Subcontractor has contracted with Contractor to furnish certain labor and/or materials as follows: \_\_\_\_\_, for the above Project; (iii) the final balance due from Contractor for labor performed and material furnished to said Project is the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), receipt of which is hereby acknowledged; (iv) Subcontractor has received all payments due under its Subcontract referred to above ("Subcontract"); (v) Subcontractor has completed all of the work for the Project which is required under the Subcontract and has paid in full or otherwise satisfied all of its obligations to its subcontractors, materialmen, equipment suppliers, vendors, laborers, and employees for all labor performed, materials and equipment furnished, and services rendered to the Project, and has paid or otherwise satisfied all other claims and indebtedness associated with the performance of the Subcontract; and (vi) no other party has any claim, or right to a lien on account of any work performed, materials or equipment furnished, or services rendered for said Project under the Subcontract.

