

This Subcontract is effective \_\_\_\_\_, by and between Wohlsen Construction Company ("Contractor"), a Pennsylvania Corporation whose principal office is located at 548 Steel Way, PO Box 7066, Lancaster, PA 17604-7066, and \_\_\_\_\_, ("Subcontractor"), whose contact address is located at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

**Subcontractor Name/Mailing Address:**

Contact:  
Phone No:  
Fax No:

Subcontract No:  
Subcontract Amt:  
Subcontract Type:

Project No:  
Project:

Owner Name/Address:

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## SUBCONTRACT

### ARTICLE I...SCOPE OF THE WORK

The Subcontractor shall perform the work ("the Work") described in Schedule A to this Subcontract and all work incidental thereto or reasonably inferable therefrom, including providing all labor, project management, supervision, quality control, materials, tools, equipment, supplies, services (including temporary services unless otherwise stated herein) and other items necessary for the complete, proper and safe construction of the Work, in accordance with all applicable laws and with the performance requirements of the Contract Documents, in strict accordance with the terms of this Subcontract, and to the satisfaction of the Contractor and the Owner. This Paragraph is intended solely as a summary of the Subcontractor's Work, not as a limitation, which Work is defined in its entirety in the Contract Documents.

### ARTICLE II...CONTRACT DOCUMENTS

2.1 This Subcontract between the Contractor and the Subcontractor consists solely of the following: (1) this Subcontract, all Schedules, and any other attachments and exhibits described herein and attached hereto; (2) Change Orders issued by the Contractor to the Subcontractor; (3) all exercised alternates; and (4) all of the contract documents for the Project by which the Contractor is bound to the Owner, including, without limitation, the written agreement between the Contractor and the Owner, ("Owner/Contractor Contract"), any general, special or supplementary conditions of that contract, and all specifications, drawings, addenda, modifications, and exercised alternates (collectively, the "Contract Documents").

2.2 In entering into this Subcontract, the Subcontractor assumes toward the Contractor all of the obligations and responsibilities that the Contractor has assumed toward the Owner related to the Work. The Contractor shall have the benefit of all rights, remedies, and redress against the Subcontractor that the Owner has against the Contractor. The terms of Owner/Contractor Contract are incorporated into the Subcontract by reference, and the Subcontractor agrees to be bound, not only to all of the requirements of quantity and quality of Work, but also to all terms and conditions contained in the Owner/Contractor Contract, including, without limitation, conditions to or limitations of rights or remedies, all administrative and reporting requirements, all notice and payment requirements, and all obligations to pay damages, costs and fees.

2.3 The Subcontractor acknowledges that it has been informed that the entire Owner/Contractor Contract is available upon request, and that the Subcontractor has inspected the Owner/Contractor Contract to the extent it feels necessary to understand all of the requirements applicable to the Work.

### ARTICLE III...SUBCONTRACT AMOUNT

The Subcontract Amount to be paid by the Contractor to the Subcontractor is for the satisfactory performance and completion of the Subcontractor's Work all of the duties, obligations and responsibilities of the Subcontractor under this Subcontract described herein, subject to additions and deductions by written Change Order, and includes all applicable taxes.

## **ARTICLE IV...COMPLETION DATE**

The Subcontractor acknowledges that time is of the essence, and that it is required to perform promptly, in accordance with Article IX below. If the Owner/Contractor Contract provides for assessment against the Contractor of liquidated delay damages, the Subcontractor shall be liable to the Contractor for any portion of such damages that may be fairly attributed to the Subcontractor's delays through any reasonable allocation. The Subcontractor shall also be liable for any actual damages caused by any delay by the Subcontractor, including, without limitation, delay damages incurred by the Contractor under the Owner/Contractor Contract, Contractor's extended general conditions, Contractor's extended site supervision costs, or costs incurred by any third party.

## **ARTICLE V...PAYMENT OF WAGES**

The Subcontractor represents and warrants that it complies with all federal, state, and local laws related to the payment of wages and remuneration to its employees and that it shall comply with applicable federal, state, or local prevailing wage requirements and prevailing wage requirements of the Contract Documents, if any. The Subcontractor further agrees that it has taken such requirements into account in entering into this Subcontract. The need to do so shall not give rise to a change or entitlement to increase in the Subcontract Amount.

## **ARTICLE VI...SUBCONTRACTOR'S INSURANCE**

6.1 Insurance Requirements. The Subcontractor shall comply with the insurance requirements as set forth in Schedule B to this Subcontract and/or the insurance requirements applicable to Subcontractor in the Contractor/Owner Agreement, whichever is greater. The identified insurance coverages are minimum amounts and Contractor shall be covered to the full extent of Subcontractor's policies if coverage is greater than specified in this Agreement. Work on site may not begin until the Subcontractor has delivered satisfactory evidence to the Contractor that all required insurance is in place.

6.2 Failure to Obtain or Maintain Insurance. If the Subcontractor fails to obtain the required insurance coverage, or if that coverage is permitted to lapse, or is canceled or ceases to be in effect, for any reason, at any time before the Work is completed (or such later date as is specified by the Owner/Contractor Contract or this Subcontract), that event shall constitute a breach entitling the Contractor to exercise all available remedies herein, including termination of this Subcontract for default. Subcontractor shall be liable to Contractor for any damages, costs, or expenses related to Subcontractor's failure to timely obtain or maintain the insurance coverage required herein, including any delays in the completion of the Work related to the Subcontractor's failure to obtain or maintain insurance.

## **ARTICLE VII...REQUIREMENTS FOR PERFORMANCE OF WORK**

7.1 Owner/Contractor Contract. The Subcontractor represents that, before entering into this Subcontract, it carefully examined the Owner/Contractor Contract, identified those portions affecting its Work, and fully ascertained the requirements of the Work and the conditions imposed by the Owner/Contractor Contract on performance of the Work. The Subcontractor shall not be entitled to any adjustment in its Subcontract Amount or to any extension of time to deal with Owner/Contractor Contract requirements or limitations that it failed to note before contracting, or to deal with deficiencies, discrepancies, ambiguities, inconsistencies, or errors in the drawings or specifications in the Owner/Contractor Contract that it discovered before contracting and failed to bring to the Contractor's attention as required. With respect to the Work, the Subcontractor shall assume toward the Contractor all obligations, risks and responsibilities which the Contractor has assumed towards the Owner under the Owner/Contractor Contract including, without limitation, all requirements relating to the quality, quantity and timeliness of the Work. Subcontractor will adhere to all requirements for quality assurance and quality control as set forth in the Contract Documents.

7.2 Site Investigation. The Subcontractor represents that, before executing this Subcontract, the Subcontractor has ascertained, by its own independent investigation, the general and local conditions involved in performing the Work including, without limitation, the location of the Work, accessibility and character of the site, and all other matters which could affect the Work or its cost. The Subcontractor has verified all information furnished by the Contractor or others and is satisfied with its correctness and accuracy.

7.3 Compliance with Laws. In carrying out all of its Work, the Subcontractor shall comply with all applicable laws, regulations, ordinances, rules, codes, statutes, and other requirements of local, state or federal governmental authorities having jurisdiction over the Project ("Laws"), including, without limitation, Laws relating to employment, equal employment opportunity, the payment of wages, licensing, and building codes. The Subcontractor represents that none of the employees used to carry out any of the Work are unauthorized aliens as defined in the Immigration Reform and Control Act of 1986. Subcontractor represents that it is aware of all federal, state, and local laws (including, if applicable, any state law and regulations regarding the classification of employees

and independent contractors) and any requirement in the Contract Documents related to the verification of its employment eligibility. Subcontractor represents that it has complied with all laws and requirements related to the verification of its employee's eligibility, including the use of the E-Verify system administered by the Department of Homeland Security and the Social Security Administration (if required by applicable law or the terms of the Owner/Contractor Contract), and Subcontractor recognizes that the failure to so comply is a breach and may result in the termination of this Subcontract for default. Subcontractor shall abide by the requirements of 41 C.F.R. 60-300.5(a) and 41 C.F.R. 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities. Vendors and subcontractors are notified that they may be subject to the provisions of: 29 CFR Part 471 Appendix A; 41 CFR Section 60-1.4 (c); 41 CFR Section 60-250.4 and/or Section 60-300.5; and 41 CFR Section 60-741.5 with respect to affirmative action program and posting requirements.

7.4 Owner's Approvals. The Subcontractor agrees that it will meet all of the requirements imposed by the Owner, Architect, or Owner's representative with respect to approval of subcontractors, materials and performance of this Subcontract. The failure to obtain these approvals shall constitute a breach of this Subcontract entitling the Contractor to exercise all available remedies herein.

7.5 Sub-Subcontractors and Materialmen. The Subcontractor shall provide to the Contractor, by completing Schedule I within thirty (30) calendar days of executing this Subcontract, the names, addresses, phone numbers and fax numbers of all material manufacturers, suppliers, and subsubcontractors the Subcontractor intends to use in completing the Work. Unless otherwise indicated by the Contractor, if the value of this Subcontract is or becomes \$100,000 or more: 1) No payment will be made to the Subcontractor until the Contractor has received a valid Schedule I, and 2) Any request for a reduction in, or final payment of, retainage must be accompanied by an updated and valid Schedule I. Should any of those proposed manufacturers, suppliers of materials, or subsubcontractors be unacceptable to the Contractor, the Subcontractor shall use another supplier, manufacturer or subsubcontractor acceptable to the Contractor, at no additional charge to the Contractor. Contractor shall have the right to communicate directly with sub-subcontractors and material suppliers, as needed.

7.6 Separate Agreements with Owner. The Subcontractor shall not enter into any agreements with the Owner or Architect with respect to the Project without first obtaining the Contractor's written consent.

7.7 Taxes, Permits, Fees. The Subcontractor agrees to pay, comply with, and hold the Owner and the Contractor harmless against the payment of all contributions, taxes, duties, or premiums for which Subcontractor may be liable under federal, state or local law arising out of the performance of this Subcontract including any interest or penalties. The Subcontractor waives any and all claims for an increase in the Subcontract Amount because of any increase in the aforementioned contributions, taxes, duties or premiums, unless payment for such increases is specifically provided for in the Owner/Contractor Contract. The Subcontractor shall obtain all approvals and obtain and pay for all permits, licenses, fees and certificates of inspection necessary for the prosecution and completion of the Work.

7.8 Hazardous Materials. The Subcontractor shall not bring, release, spill, or disburse any hazardous material onto the site. If the Subcontractor believes that the Work will require use of hazardous materials on the site, the Subcontractor shall immediately notify the Contractor and obtain a clarification before proceeding. For this purpose, hazardous materials are defined as any toxic substance or hazardous chemical defined or regulated pursuant to federal, state or local laws relating to pollution, treatment, storage or disposal of waste, or protection of human health or the environment. Such laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, The Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and Laws relating to emission, spills, leaks, discharges, releases or threatened releases of toxic material.

7.9 Bonds. If required, the Subcontractor shall provide Performance and Payment Bonds, prior to the start of Work, on the forms provided by the Contractor. The bonds shall be equal to 100% of the Subcontract Amount, as may be adjusted by change order without surety approval, and shall be issued by a surety authorized to conduct business in the state where the Project is located, listed on Circular 570 of the US Department of the Treasury and is otherwise acceptable to the Contractor. If performance and payment bonds are not required in the bidding process, but are made a part of Subcontract requirements, Contractor will then pay the actual cost. In any event the cost of the bonds will be a line item on the Subcontractor's Schedule of Values.

## 7.10 Subcontractor's Indemnity, General.

7.10.1 To the maximum extent permitted by applicable Laws, the Subcontractor shall indemnify and hold harmless the Contractor, the Owner, and their respective directors, officers, and employees (each an "Indemnified Party" and together the "Indemnified Parties") against claims, demands, causes of action, liabilities, losses, statutory or other legally-imposed penalties (including claims for unpaid wages or claims related to classification of employees as independent contractors), other costs, and expenses, including without limitation, attorneys' fees and consultants' fees (collectively, "Losses") arising from a) any breach of this Subcontract, b) death, personal injury, or property damage occurring in connection with the Subcontractor's Work, c) any violation of any law or regulation, or d) any cause otherwise arising from Subcontractor's performance of its obligations hereunder, excepting only that Subcontractor shall not be required to indemnify or hold harmless an Indemnified Party to the extent of a loss caused by the Indemnified Party's negligence.

7.10.2 DUTY TO DEFEND: Upon written request by an Indemnified Party, Subcontractor, at its own expense, shall defend any suit or action that is subject to the obligation in this Section 7.10, regardless of any allegation that the that the Losses are alleged to have been caused by a negligent act or omission of the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole and absolute discretion, retain counsel to defend the action and shall be reimbursed for costs by Subcontractor, or may tender defense to Subcontractor who shall retain competent counsel acceptable to Contractor.

7.10.3 In claims against any Indemnified Party under this Section 7.10 by an employee of the Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.11 Indemnity Extends to Violation of Laws. Without limitation, the Subcontractor's obligations of defense and indemnity pursuant to Paragraph 7.10 expressly extend to citations, penalties, fines, clean-up orders, or other Losses arising from violations of any applicable Law, including, without limitation, violations of environmental laws or regulations, laws or regulations relating to the health, safety or welfare of persons on the site, or the failure of Subcontractor, or anyone for whom the Subcontractor is responsible, to pay wages which includes bonuses, commissions, fringe benefits, overtime wages, or any other remuneration.

7.12 Use of The Contractor's Facilities. The Subcontractor shall not use the Contractor's material, vehicles, equipment, machinery, lifts, gas, electricity, water, appliances, facilities, or other services ("Contractor's Facilities"), nor shall the Subcontractor allow any of its lower tier subsubcontractors to use Contractor's Facilities, without the prior written consent of the Contractor's superintendent. If such written consent is obtained, the Subcontractor shall pay the Contractor's reasonable charges upon demand. The Subcontractor agrees to use any of the Contractor's Facilities "as is" and at the Subcontractor's own sole risk. The Subcontractor agrees to defend, indemnify, and hold harmless the Contractor from and against all Losses arising from or relating to the Subcontractor's use of the Contractor's Facilities. This assumption of liability is independent from, and not limited by the amount of available insurance from the Subcontractor or its lower tier subsubcontractor's insurance.

7.13 Inspection of Work/Correction of Non-Conformities. The Subcontractor shall facilitate the inspection by Contractor, Owner, Owner's representative, or the Architect of the Work or materials provided under this Subcontract. The inspection may be at the project site or at any place where such Work or materials may be in preparation, manufacture, storage, or installation. If any portion of the Work or materials is rejected by the Contractor, the Architect, Owner or Owner's representative as defective or non-conforming, Subcontractor shall be considered to be in breach of its obligations under the Subcontract, and Contractor shall be entitled to exercise rights set forth in Article 13 herein. Subcontractor shall, within forty-eight (48) hours of receiving notice of the rejection, begin to replace or correct the rejected Work or materials. If correction requires damaging or destroying other Work, the Work of other subcontractors, or other property, the Subcontractor shall be responsible for the cost to restore that other Work or property to its original condition. If the Subcontractor does not complete the cure within forty-eight (48) hours, or such longer time as the Contractor may allow, the Contractor shall have the right to replace the rejected Work or materials. Subcontractor shall be liable for all costs, damages, and expenses incurred by the Contractor in remedying or replacing the rejected Work or materials, which shall include five-percent (5%) for Contractor's overhead and a ten-percent (10%) mark-up on work performed by other contractors and costs for Contractor personnel at standard billing rates. Contractor shall have the right to deduct all such costs from any moneys due or to become due the Subcontractor. If, in the Contractor's opinion, it is not expedient to correct or replace all or any part of the rejected Work or materials, the Contractor may accept the non-conforming Work and deduct from payments

due, or to become due, to the Subcontractor, such amounts as, in the Contractor's reasonable judgment, represent the cost of correction.

7.14 **Wrongful Rejection by Owner.** If any of the Subcontractor's Work or materials are wrongfully rejected by the Owner or the Architect, the Subcontractor's remedy for that wrongful rejection shall be limited to the Contractor's remedy under the Owner/Contractor Contract.

7.15 **Submittals.** The Subcontractor shall prepare and submit all shop drawings, samples, and other submittals required by the Subcontract to the Contractor either (1) within thirty (30) calendar days after executing this Subcontract, or (2) in accordance with the submittal schedule provided by the Contractor, or (3) in accordance with Contract Documents, whichever is earlier. Submittals shall be subject to review by the Contractor and approval by Owner's Architect or Engineer. All product data and shop drawings shall be submitted electronically to the Contractor. Submittals must comply with all Subcontract requirements, and approval of non-conforming submittals shall not relieve the Subcontractor of the obligation to comply with this Subcontract. The fact that the Contractor or Architect has approved a submittal that departs from the requirements of this Subcontract shall not constitute approval of the departure, or authorize such a departure, unless the Contractor and Architect have expressly acknowledged, in writing, that the submittal represents a change in the requirements of this Subcontract and that the change is approved.

#### 7.16 Supervision

7.16.1 The Subcontractor shall provide adequate supervision of the Work, including the work of any sub-subcontractors or vendors retained by Subcontractor, at all times. This supervision shall include, but shall not necessarily be limited to, provision of a full-time fluent English speaking supervisor on the project site at all times while Work is in progress there. The Subcontractor shall, promptly after executing the Subcontract, designate a supervisor, who must be approved by the Contractor. Once approved, the supervisor shall not be changed without the Contractor's advance approval. The supervisor shall be authorized to act for the Subcontractor in all matters including changes to this Subcontract.

7.16.2 The Subcontractor's Supervisor shall report to the Contractor's designated project superintendent before beginning work on the project and periodically thereafter, as required by the Contractor. The Subcontractor shall maintain daily logs in a form and degree of detail acceptable to the Contractor and shall submit them to the Contractor at its site office at the end of each workday.

7.17 **Progress Meetings.** The Subcontractor's Supervisor shall attend all progress meetings while the Work, or any part of it, is in progress, or as requested by the Contractor, and shall be prepared to address schedules, manpower, deliveries, and relevant safety issues, and other issues affecting the Work. Representatives of sub-subcontractors whose Work is critical under the current schedule may also be required to attend these meetings.

7.18 **Coordination with Adjoining Work.** Subcontractor shall coordinate its Work with the adjoining work of other trades. If requested, Subcontractor shall cooperate in any building information modelling ("BIM") conducted on the Project, and shall supply true and accurate information related to its Work for incorporation into any model. If the Subcontractor's Work depends upon or adjoins work of others or existing conditions in any way, and the Subcontractor regards the other work or existing conditions to be unacceptable for safe and proper completion of its Work, the Subcontractor shall notify the Contractor, in writing, before proceeding with the affected Work. If the Subcontractor proceeds without giving such notice, the Subcontractor shall be deemed to have accepted the other work or existing conditions.

7.19 **Site Work Conditions.** The Subcontractor shall at all times keep the area in which the Subcontractor is working broom clean, free from rubbish, debris, waste and/or surplus materials resulting from its operations and shall leave the premises in such condition as to permit the succeeding work to be commenced without further cleaning. The Subcontractor's Work is to be clean and in a condition acceptable to the Contractor and the Owner. Should Subcontractor fail to comply, the Contractor may, upon twenty-four (24) hours' notice, proceed with cleanup of the Subcontractor's area at the Subcontractor's expense. Contractor shall be entitled to deduct the cost of any necessary clean up measures plus five-percent (5%) overhead and a ten-percent (10%) mark-up on work performed by other contractors and costs for Contractor personnel at standard billing rates from any amounts due or to become due to the Subcontractor.

## 7.20 Subcontractor's Warranty

7.20.1 The Subcontractor warrants that all materials used in the Work are new and previously unused, unless otherwise expressly allowed by this Subcontract. The Subcontractor warrants, for a period of one year from Substantial Completion of the project, or such longer time as the Owner/Contractor Contract requires, that the Work is in full conformity with this Subcontract, and is free from defects in workmanship and free from manufacturing defects or other defects in materials. In addition, with respect to the Subcontractor's Work, the Subcontractor hereby expressly assumes all warranty obligations and responsibilities assumed by the Contractor under the Owner/Contractor Contract for the Work.

7.20.2 If, at any time during the warranty period, the Subcontractor receives written notice of a defect or non-conformity in the Work, the Subcontractor shall promptly, and in any event within the time allowed by the Owner/Contractor Contract, repair or replace the defective or non-conforming Work. The Subcontractor shall make such repairs or replacements at its own cost, and shall also pay the cost of any restoring to its original condition any other Work or property that is disassembled or damaged as a result of the Subcontractor's repairs or replacement. In making such repairs or replacements, the Subcontractor shall schedule its Work to accommodate the convenience of the Owner.

7.21 Conduct of Employees/Subcontractors. The Subcontractor shall employ in the Work only those employees, subcontractors and suppliers who will conduct themselves in an appropriate, cooperative manner, and will work in harmony with those employed by other Subcontractors, the Contractor and the Owner. If, in the Contractor's reasonable opinion, any person or persons employed by the Subcontractor in the Work fails to behave in the required manner, the Contractor may require that he or she be removed from the Project and a suitable replacement substituted, and the Subcontractor shall promptly comply with Contractor's directive.

7.21.1 Subcontractor and its sub-subcontractors and all suppliers shall not employ anyone in whose employment may be objected to by Contractor or Owner. The Subcontractor shall not employ labor, means, materials or equipment which may cause strikes, work stoppages or any disturbances by labor employed by Subcontractor, other contractors or Subcontractors, or in connection with the Subcontractor's Work or the location thereof. If the Subcontractor fails to carry out or comply with any of the foregoing provisions, Contractor shall have the right, in addition to any other rights and remedies provided by law, to exercise all rights related to breach set forth in Article XIII.

## ARTICLE VIII...SAFETY

8.1 Safety Requirements. The Subcontractor is being selected by the Contractor as a competent contractor with respect to the Work. Therefore, the Subcontractor is required to perform its Work in a safe manner. The Contractor is relying upon the skill and expertise of the Subcontractor to protect workers on the job site. The Subcontractor shall comply with all applicable local, state, or federal safety and health requirements, including OSHA and Contractor site specific requirements as applicable. In accordance with state or federal requirements or both, the Subcontractor shall formulate and implement its own safety rules and regulations to promote safe and orderly prosecution of the Work. Such rules shall provide for frequent and regular inspection of the job site, materials and equipment and the designation of a Competent Person, as identified by the Subcontractor. The Subcontractor shall designate a Competent Person, as defined by OSHA, as someone capable of identifying existing and predictable hazards and who has the authority to take prompt corrective measures to eliminate them. The Subcontractor shall also follow any safety rules that the Owner or Owner/Contractor Contract may impose, as well as any safety directions that may be issued by the Contractor. The Subcontractor also agrees to comply with any safety directions or rules reasonably issued by the Owner or the Contractor to prevent injury or assure compliance with applicable law, whether or not the Subcontractor agrees that those directions or rules are actually required in order to comply with applicable law, and to do so without demanding further compensation from the Contractor for such compliance. If the Subcontractor creates an unsafe or hazardous condition or otherwise fails to comply with safety directions or rules, reasonably imposed by the Contractor, the Owner, or the Owner/Contractor Contract, then Contractor may take corrective action without further notice (including, without limitation, removing Subcontractor personnel from the jobsite) and the Subcontractor shall be liable to the Contractor for the resulting costs. Subcontractor shall indemnify, defend, and hold harmless Contractor from any costs, fines, penalties, suits, expenses, or damages (including legal fees and costs) arising out of any hazard or safety violations committed by Subcontractor, including any citation or fine imposed by OSHA or state equivalents.

8.2 Contractor's Policies. The Subcontractor is particularly alerted that it must comply with the Contractor's written policies as outlined in Contractor's Safety & Health Manual, which is incorporated herein by reference. This document is available upon request. The Subcontractor is urged to review the policy before beginning Work. This policy may, in accordance with its terms,

require certain searches of the Subcontractor's employees and/or drug testing, and the Subcontractor agrees that it will comply with such requirements. The Contractor will promptly identify to the Subcontractor any additional policies with which it is required to comply, and Subcontractor will likewise review those policies before beginning Work and will comply with them.

8.3 Control of Infectious Disease. In addition to other health and safety requirements set forth in the Subcontract, Subcontractor agrees to its ongoing obligation to contribute to the control of infectious disease on the project site. Subcontractor shall comply with the most recent guidance of all federal, state, and local authorities related to the mitigation of infectious diseases., and shall only supply workers to the project site that it can reasonably determine, in accordance with applicable guidance, are fit for duty. Subcontractor shall include in its safety policies an infectious disease mitigation plan, a copy of which shall be provided to Contractor prior to beginning work onsite, and will adhere to any Contractor or Owner site policies related to the mitigation of infectious diseases. Subcontractor shall ensure that obligations related to site safety policies, including the control of infectious diseases, are incorporated into all subcontracts or supply contracts for any company for which the Subcontractor is responsible that will come onto the project site. Subcontractor agrees that mitigation measures may be revised during the course of the project and that it will adopt any revisions to mitigation measures without demanding compensation from Contractor for such compliance.

8.3.1 Subcontractor recognizes that mitigation of infectious disease is a shared responsibility among all project participants, and that its plan and work practices must be coordinated with other trades on the project. Contractor will have final authority regarding work practices related to the mitigation of infectious disease and Subcontractor shall not be entitled to additional compensation or time in order to implement protocols related to the control of infectious diseases, whether or not Subcontractor agrees with Contractor's or Owner's protocols.

## ARTICLE IX...SCHEDULE

9.1 Time is of the essence of this Subcontract. The Contractor will develop, maintain, update, and revise as appropriate a schedule for the entire work of the Project, taking into account input from the Subcontractor, the Owner, the Architect, and sub-subcontractors, suppliers, and others involved with the Project. As used herein, "Project Schedule" means the latest revision, most recent update, or most current version of the schedule then in effect. The Subcontractor shall begin and proceed with the Subcontract Work when and as directed by the Contractor according to the Project Schedule. The Subcontractor acknowledges the Contractor's right to manage the Project, and the Subcontractor agrees to implement promptly and at no increase in Subcontract Amount the Contractor's decisions and directives which the Contractor determines in good faith to be in the interests of the Project as a whole as regards the Project Schedule, organization, flow, coordination, and sequence of the Project work. All float in any Project Schedule shall belong entirely to the Contractor and shall be available for the Contractor's exclusive use in scheduling the overall Project.

9.2 The Subcontractor shall comply in all respects with the Project Schedule, as may be revised. The Subcontractor recognizes and agrees that any schedules or scheduling information, whether received before or after the effective date or signing of the Subcontract, are estimates of desired or predicted progress which the Contractor is entitled to change during the course of construction as necessary to facilitate job progress. Subcontractor represents that its price allows for variations or revisions in dates, durations, out of sequence work or other scheduling requirements pertaining to or affecting the Subcontract Work. The Subcontractor acknowledges that in order for Contractor to coordinate and manage the overall Project, it may be necessary for Contractor to limit, allocate, and/or coordinate site access and access to work areas, utilities, storage spaces, and other characteristics of the Project site and/or the Project work ("Site Resources") and certain subcontractors or trades may be given preference to Site Resources in order to maintain the Project Schedule. The Contractor shall have no claim for credit if the Subcontractor's actual as-built schedule is more favorable than planned, and the Subcontractor shall have no monetary claim against the Contractor if the Subcontractor's actual as-built schedule is less favorable than planned.

9.3 The Subcontractor shall coordinate and continuously perform the Subcontract Work competently, efficiently, and with all possible skill, efficiency, and promptness so as to facilitate the general progress of the Project. The Subcontractor shall not delay, disrupt, damage, or render more expensive the work of the Contractor or any other subcontractor. The Subcontractor shall provide information and assist the Contractor in developing the Contractor's schedules for the Project and shall cooperate fully in all revisions, updates, and changes to such schedules which could affect the Subcontract Work and/or could affect predecessor or successor activities. If so ordered by the Contractor, the Subcontractor shall prosecute certain portions of the Subcontract Work in preference to other portions and take such additional or other action as the Contractor in good faith deems to be in the best interests of the Project as a whole, all at no increase in Subcontract Amount. The Subcontractor shall pay the Contractor for any damages assessed by the Owner against the Contractor and costs otherwise incurred by the Contractor as a result of delays or

difficulties caused by or attributable to the Subcontractor.

9.4 If the Subcontractor falls behind the portions of Project Schedule applicable to the Subcontract Work or if, in the opinion of the Contractor, the Subcontractor is otherwise not maintaining a satisfactory rate of progress so as to complete the Project in the most expeditious, efficient and economical manner as determined by the Contractor, the Contractor may direct the Subcontractor to take such action as the Contractor in good faith deems necessary or appropriate to improve the Subcontractor's rate of progress including, but not limited to, increasing the number of superintendents, foremen, skilled labor, and unskilled labor, increasing the number of crews, increasing the number of shifts, employing more or better equipment, working overtime, expediting delivery of materials, substituting materials, changing sequence of performance, prosecuting parts of the Subcontract Work in preference to other parts, and any other increase or acceleration of effort, all of which shall be performed by the Subcontractor at no cost to the Contractor. In addition to the foregoing, the Contractor shall have the right, but not the obligation and without prejudice to any other right or remedy, to provide any additional labor, materials, equipment, supervision, or other item and to take such further actions as the Contractor in good faith deems necessary or appropriate, which shall be at the Subcontractor's cost and which the Contractor shall be entitled to deduct from any payment, whether then due or thereafter to become due to the Subcontractor.

9.5 In the event the Subcontract Work is delayed, disrupted, damaged, or rendered more expensive by the Owner or by Architect or others for whom the Owner may be liable, the Subcontractor, as its sole and exclusive remedy, may upon written request properly made to the Contractor obtain time extensions and an increase in the Subcontract Amount but only to the extent of any amounts and time extensions that the Contractor, on behalf of the Subcontractor, actually receives from the Owner for Subcontractor's allocable share of such delays, disruptions, damages, and added expense. If the Subcontract Work is impermissibly delayed or disrupted by the Contractor or by others for whom the Contractor may be liable, the Subcontractor as its sole and exclusive remedy may upon written request properly made to the Contractor obtain only time extensions, but no monetary damages, for each day of proven, actual, excusable, and non-concurrent delay to the Subcontract Work which, at the time of such delay, was on the Project's critical path. As a condition precedent to any relief, the Subcontractor must give the Contractor written notice of any event alleged to cause delay, disruption, damage, and/or added expense to the Subcontract Work within five (5) days after the Subcontractor first knew or should have known of such event, or within two (2) working days before the Contractor is required to give notice of such event to the Owner (or the Owner's representative), whichever is earliest, providing in such notice all the information the Contractor is required to give the Owner and stating the specific relief sought by the Subcontractor with respect to such event. The Subcontractor's failure to provide written notice to the Contractor as set forth above shall constitute a waiver, bar, and release of any such claim.

9.6 Subcontractor acknowledges that any schedule attached to or provided with this subcontract will be superseded in accordance with the above and that a formal amendment to the subcontract is not needed.

## **ARTICLE X...PAYMENT**

10.1 Schedule of Values. Within thirty (30) calendar days of executing this Subcontract and before submitting its first application for payment, the Subcontractor shall submit to the Contractor a schedule of values, prepared in a form and degree of detail acceptable to the Contractor. If approved, this schedule of values shall become the basis for determining the amount due on applications for progress payment. If the parties do not agree on a schedule of values for this purpose, the Contractor shall establish the schedule of values.

10.2 Stored Materials. Payment for stored materials will not be allowed without prior written approval by the Contractor. The risk of loss for any such material shall remain with the Subcontractor until installation into the project and acceptance by the Owner. This includes, but is not limited to materials stored on site but not under the control of the Contractor. Upon approval by the Contractor, the Subcontractor must provide the following before payment is issued for stored material:

- 1) Completed Security Agreement and Bill of Sale on the forms furnished by the Contractor.
- 2) Acknowledgment of the filing of the appropriate UCC Form with the responsible State UCC department naming the Contractor as Secured Party as to said materials and a sufficiently detailed description of the materials. Subcontractor will bear any and all filing costs.
- 3) Acknowledgment of possession, if the material is being stored with by a third party, on the form specified by Contractor.
- 4) Certificate of Insurance indicating the location, an itemized description, with dollar value, of the stored material and also naming the Contractor and the Owner as Loss Payee.
- 5) The Subcontractor is responsible for ensuring that the material must be securely stored.



- 6) The material must be segregated from the other material of the Subcontractor and/or any third parties.
- 7) The material must clearly be identified as the property of Contractor.

Contractor shall have the right to obtain stored materials from Subcontractor's facilities that have been paid for, and Subcontractor shall make materials available at its facilities to Contractor upon 24 hours' notice.

10.3 Applications for Progress Payment. The Subcontractor shall submit to the Contractor applications for payment, on the form required by the Owner/Contractor Contract or, if no form is specified, then on AIA Document G702/703 or such other form as the Contractor directs. The applications for payment shall be submitted on the dates or at the intervals specified by the Contractor. Each Application for Payment shall describe the Work performed during the preceding payment period for which payment is requested, as specified in the form, and include such documentation as the Contractor may reasonably require. Among other things, but without limitation, the Subcontractor may be required to provide releases of liens and invoices to verify costs incurred and claimed and certified payrolls. With each application for payment, the Subcontractor must also submit a waiver of mechanic's liens in the form attached as Schedule G, constituting a conditional waiver of liens with respect to all Work for which payment is rightfully due. Incorrect or incomplete Applications and documentation will be rejected. Unless indicated otherwise by the Contractor, if the value of this Subcontract is or becomes \$100,000 or more, then Second Tier Releases in the form specified in Schedule J, or such other form specified by the Contractor, are required. After the Subcontractor has received payment for the first Application for Payment, Second Tier Releases are required from all subsubcontractors and suppliers listed on Schedule I before payment will be made for each succeeding Application for Payment. The Second Tier Release confirms payment of the Subcontractor's subsubcontractors and suppliers for the period for which the Subcontractor has been paid and must be received before the Subcontractor's payment for the next payment period can be released.

10.4 Progress Payments. All undisputed portions of progress payments shall be made to the Subcontractor within fourteen (14) calendar days after the Contractor has received payment from the Owner with respect to that portion of the Work, receipt of payment from Owner being a condition precedent to Contractor's obligation to pay Subcontractor. The Subcontractor agrees that such payments are subject to the express condition precedent that the Owner and the Contractor have approved the Work as being in accordance with the Subcontract (including applicable Owner/Contractor Contract requirements) and that the Subcontractor has provided the Contractor with satisfactory proof it has paid all amounts it owes in connection with the Subcontract. Progress payments shall be subject to retainage of ten (10%) percent, or such other amount as may be permitted by applicable laws. Retainage may be invoiced and shall be paid in accordance with the release of retainage requirements set forth in the Owner/Contractor Contract, as applicable to Subcontractor's Work.

10.5 Withholding of Payment. In addition to any other grounds set forth herein, the Contractor may withhold payment if any of the following occur: (1) the Work is defective and such defects have not been remedied; (2) the Subcontractor has failed to pay subsubcontractors or suppliers promptly or has made false or inaccurate certifications that payments to the subsubcontractors or suppliers are due or have been made; (3) any mechanic's lien related to Subcontractor's Work has been filed against the Owner, the project site or any portion thereof or interest therein, or any improvements on the site, and the Subcontractor, upon notice, has failed to remove the lien, by bonding it off or otherwise; (4) the Subcontractor has failed to provide required scheduling or schedule update information; (5) the Contractor reasonably determines that the Subcontractor's progress has fallen behind any established schedule; (6) the Contractor has reason to believe that the balance of the Work cannot be completed, or that asserted or likely claims arising from the Subcontractor's acts or omissions cannot be resolved for the unpaid balance of the Subcontract Amount; (7) the Subcontractor has not provided a lien waiver or other required documentation for the amount rightfully due to the Subcontractor; or (8) the Subcontractor is otherwise in breach of this Subcontract. The Contractor will promptly give the Subcontractor written notice of any performance deficiencies and any intended withholdings due to deficiency items and/or breaches of the Subcontract.

10.6 Payments to Sub-subcontractors and/or Suppliers. Subcontractor agrees that the Contractor may pay all materialmen, suppliers, laborers, subsubcontractors and any other persons who have not been paid the monies due them in connection with this Subcontract, whether or not a lien has been filed. The Contractor shall give the Subcontractor seven (7) days written notice of its intention to do so and the Subcontractor shall within such period provide the Contractor with a written statement of any and all objections the Subcontractor may have to such direct payment, stating in detail any dispute as to the accuracy of the amount claimed or any defects in the labor performed or materials supplied. Failure to make a written objection in accordance with this section shall be deemed an acquiescence by the Subcontractor in such payment. Payments may be made directly to the subsubcontractors or suppliers, or by joint check drawn to the order of the Subcontractor and the subsubcontractor or supplier in

question, whichever shall seem more advantageous to the Contractor in its sole discretion. Such payments may be deducted from amounts otherwise due the Subcontractor. This provision, allowing direct payment to subsubcontractors and other suppliers, is intended for the protection of the Contractor only, and does not confer rights upon anyone not a direct party to this Subcontract, as a third-party beneficiary or otherwise. Monies retained by the Contractor as a result of the Subcontractor's failure to make payments to subsubcontractors or suppliers shall be regarded as trust funds that may be paid directly to the subsubcontractors or suppliers, and consequently, any such payments made, whether directly or by joint check, shall not constitute bankruptcy preferences. However, no amounts the Contractor pays to the Subcontractor in good faith, and which do not subsequently reach subsubcontractors or suppliers shall give rise to liability of the Contractor to the subsubcontractors or suppliers. The Subcontractor agrees that all payments made to the Subcontractor, whether by joint check or otherwise, are trust funds that shall be used by the Subcontractor first to pay amounts due for supplying labor or materials for the Work, and that only money remaining after such payments are made may be used for any other purpose. Monies paid by joint check shall be deemed to have been paid fully to the subsubcontractor or supplier named as a joint payee, unless the Contractor agrees otherwise in writing. The Contractor may require that a subsubcontractor or supplier who is to receive payment by joint check acknowledge in writing that it will demand payment to it of the full amount of the check, and will not remit any portion thereof to the Subcontractor.

10.7 Rights of Set-Off/Recoupment, Etc. The Contractor may set off any amount due to the Subcontractor against any obligation or debt the Subcontractor owes to the Contractor, whether arising in connection with the Subcontract or from any other agreement between the parties. The Contractor also reserves all rights of recoupment and all lien or other rights against the Subcontractor with respect to money, credits, or other property within its possession or control that may be available to it under applicable law.

10.8 Final Payment. Final payment shall be made within fourteen (14) calendar days after final payment for the Subcontractor's Work is received by the Contractor from the Owner and the Subcontractor satisfies all of the following conditions:

- 1) Satisfactory completion, of the Work, including approval and acceptance of the Subcontractor's Work by the Contractor, the Owner and the Architect.
- 2) Delivery to the Contractor by the Subcontractor of all manuals, as-built drawings, guarantees and warranties for material and equipment furnished by the Subcontractor or any other specific documents required by the Contract Documents.
- 3) Submittal to the Contractor of satisfactory evidence by the Subcontractor that all labor and material accounts incurred by the Subcontractor in connection with his Work have been paid in full.
- 4) Submittal to the Contractor of a completed Affidavit, Release of Lien, and Waiver of Claim by the Subcontractor.
- 5) Consent of Surety for final payment whenever the Subcontractor has provided Performance and Payment Bonds.
- 6) If Second Tier Releases are required in accordance with Article 10.3 then, in addition to the applicable Second Tier Releases, any request for a reduction in retainage or final payment must be accompanied by an updated and valid Schedule I.
- 7) Any other close-out documentation required by the Contract Documents or reasonably requested by Contractor.

10.9 Waiver of Liens/Bond Costs. The Subcontractor agrees to execute and/or obtain from its subcontractor and suppliers such further releases and/or waivers of lien and lien rights as may be required by the Owner/Contractor Contract or requested by the Contractor. If any of the Subcontractors subcontractors or suppliers of any tier files a mechanics' lien petition, despite the Contractor's having paid the Subcontractor all amounts as required by the Subcontract, the Subcontractor shall cause the lien to be discharged, by posting a bond with the appropriate authorities or otherwise, within five (5) calendar days of notice. If such liens are not so discharged, the Contractor may avail itself of any remedies allowed by law or equity, including, without limitation, itself taking appropriate measures to remove the liens, and charging the resulting costs, including attorney's fees, to the Subcontractor, withholding the amount of such costs from future payments to the Subcontractor, and/or terminating the Subcontract for default. The Subcontractor shall immediately reimburse the Contractor for any amounts that are paid out under the Contractor's payment bond for the Project, if any, due to the Subcontractor's failure to make payments due, and/or for any costs, including attorney's fees, that are incurred as a result of such failures by the Subcontractor. If the Contractor incurs, via indemnity obligations or otherwise, any costs or expenses whatsoever as a result of the Subcontractor's failure timely to pay amounts it owes to subsubcontractors, suppliers, or others in connection with the Work, the Subcontractor shall immediately reimburse the Contractor for such costs, including attorney's fees.

10.10 Payment Not Acceptance. Unless otherwise provided by the Owner/Contractor Contract, the fact that payment has been made with respect to all or any portion of the Work shall not constitute an acceptance of that Work if it is defective or otherwise not in conformity with the Subcontract, and shall not constitute a waiver of any of the Contractor's or the Owner's rights or

remedies against the Subcontractor with respect to any defects or other failures to conform to the Subcontract, including applicable requirements of the Owner/Contractor Contract.

10.11 Penalties/Interest. If the Contractor fails to pay the Subcontractor within the time allowed by Article X, the Subcontractor shall be entitled to receive interest on amounts due, accruing from the day after the required date for payment until the date on which payment is made. The applicable rate of interest shall be the legal rate in effect when the interest penalty accrues.

## **ARTICLE XI...CHANGE IN THE WORK**

11.1 Changes Authorized. The Contractor may, at any time, or by agreement with the Subcontractor, without notice to the Subcontractor's sureties, make changes in the Work. Any order directing a change shall be in writing signed by the Contractor's designated authorized representative, per Schedule D attached. The Subcontractor shall perform the Work as changed without delay, whether or not there has been any resolution of any claims the Subcontractor may have made for adjustments due to the change directive, unless the Contractor specifies otherwise, in writing. Failure to proceed promptly with changed Work shall constitute a material breach of the Subcontract. Extra Work performed without the Contractor's written authorization will be at the Subcontractor's own risk.

11.2 Change Requests. If the Subcontractor believes it is entitled to adjustments in compensation, time, or other provisions of the Subcontract as a result of a change, it shall do the following: (1) within five (5) calendar days of receiving notice of the change or proposed change (or within such shorter time as will allow the Contractor to comply with the Owner/Contractor Contract requirements), submit to the Contractor a written notice identifying the claimed change and stating that adjustments in compensation and/or time or other contract provisions (as applicable) are being requested; (2) within ten (10) calendar days of receiving the notice of the change or proposed change (or within such shorter time as will allow the Contractor to comply with the Owner/Contractor Contract requirements), submit to the Contractor a written proposal detailing the amount of any such adjustment, including a detailed breakdown of material quantities, labor hours, labor rates, unit prices, supplier and subsubcontractor quotations (if applicable) as well as any special fees, bonds, taxes, down payments, etc., and an explanation of any schedule changes requested.

11.3 If the Subcontractor fails to submit a written proposal within the stated time period, and the Contractor is required to submit a price quotation to the Owner which includes this Subcontract change, the Contractor shall use its best estimate of the proposed changes as it affects the Subcontractor and its quotation to the Owner, and this estimate shall be the maximum equitable adjustment due to the Subcontractor. If the Work for which the Subcontractor claims extra compensation is determined by the Owner or Architect not to entitle the Contractor to a change order or extra compensation, then the Contractor shall not be liable to the Subcontractor for any extra compensation for such Work.

11.4 The Subcontractor is entitled to an extension of time on account of a Change Order only to the extent that the Contractor has received an extension of time from the Owner for changes made to the Subcontractor's Work. The Subcontractor is entitled to an adjustment to the Subcontract Sum only to the extent that the Contractor receives an adjustment to its Contract Sum on account of the changes made to the Subcontractor's Work (less the Contractor's mark-up for overhead and profit). In no event will the Subcontractor be entitled to an extension of time or an adjustment in the Subcontract Sum greater than the amount of time, or adjustment to the Owner/Contractor Contract Sum, that the Contractor received from the Owner.

11.5 Time and Material Tickets. The Contractor will only accept time and material tickets on the form provided by the Contractor. No other forms will be accepted. Other forms, regardless of the execution by a representative of the Contractor, will be considered void and unenforceable. Time and material tickets must be presented to the Contractor's Superintendent at the end of each work day. Signature of a time and material ticket is solely an acknowledgment of work performed. Any additional compensation must be approved by Contractor via change order. Subcontractor must submit any change order request in accordance with the provisions of this Subcontract.

11.6 All Change Orders must be in writing. No oral directive by Contractor, or claimed oral agreement between Contractor and Subcontractor, will constitute a waiver or modification of this written Change Order requirement. An express condition precedent to payment to Subcontractor on account of any changes made or directed by Owner, by and through the Contractor, shall be that Contractor shall have first received such payment from Owner. In no event shall the overhead or profit percentage charged by the Subcontractor on any change order exceed the overhead or profit allowed in the Owner/Contractor Contract.

11.7 Agreement on any Change Order shall constitute full and final settlement of any costs and expenses related to the change in the Work which is the subject of the Change Order.

## ARTICLE XII...CLAIMS

12.1 "Claim" as used in this Article shall mean any demand or assertion by either party seeking, as a matter of right, payment of money, a change to the Subcontract, or other relief with respect to the terms of the Subcontract. The term "Claim" also includes other disputes and matters in question between the Contractor and Subcontractor arising out of or relating to the Subcontract.

12.2 In the event that a Claim is based on an act or omission of the Contractor or the Owner, the Subcontractor shall provide written notice of the Claim to the Contractor within the lesser of: 1) ten (10) days of the event that gave rise to the Claim or 2) within such time as will allow the Contractor to analyze the information and submit it to the Owner within the time provided for in the Owner/Contractor Contract. The written notice must include any submissions or information required by the Owner/Contractor Contract. The Subcontractor shall also comply with all other requirements of this Subcontract and the Owner/Contractor Contract relating to such Claims. The parties acknowledge that timely notice of a Claim is a material term of this agreement, as a lack of timely notice providing details of the Claim may prejudice Contractor's ability to timely remedy the conditions leading to the Claim, adjust the work on the Project to mitigate the effects of the Claim, and/or to seek compensation from the Owner. The Subcontractor's failure to comply with these provisions with respect to any Claim shall be deemed a waiver of the Claim.

12.2.1 Notice of Intent to Claim Against Owner. If the Claim is based on the acts or omissions of the Owner or, if the Contractor reasonably believes that the Owner is ultimately liable for the Subcontractor's Claim and intends to assert a claim against the Owner, based in whole or in part, on the Subcontractor's Claim, the Contractor shall so notify the Subcontractor, in writing, within ten (10) working days of receipt of Subcontractor's notice. If no such notice is issued, the Subcontractor shall be free to litigate the Claim as provided in Paragraph 12.2.3. If such notice is issued, the Subcontractor agrees that it will not commence any suit on the Claim, pending resolution of the Contractor's claim against the Owner.

12.2.2 Prosecution of Claims Against Owner. If the Claim is based on the actions or omissions of the Owner, the Contractor will, at its option, (1) present such Subcontractor Claims to the Owner and respond to inquiries by the Owner relating to the Subcontractor's claim, in the Contractor's name, or (2) if the Contractor is permitted to do so by the Owner/Contractor Contract, authorize the Subcontractor to present such Claims to the Owner, or responses to inquiries by the Owner, in the Contractor's name. The Contractor shall not be required to submit any Claim on behalf of the Subcontractor, or permit the Subcontractor to prosecute any Claim in the Contractor's name if, in the Contractor's reasonable judgment, to do so will subject the Contractor to any penalties or other sanctions or cause the Contractor to violate any applicable law relating to the presentation of false or inaccurate Claims. If the Claim is prosecuted or defended by the Contractor, the Subcontractor agrees to furnish all certifications, documents, statements, witnesses, and other information required by the Contractor, and to pay or reimburse the Contractor for all costs, including attorneys' fees, incurred.

12.2.3 Subcontractor's Right To Litigate. If the Subcontractor has complied with all notice and documentation provisions with respect to a Claim, and the Contractor has not issued a notice pursuant to Paragraph 12.2.1, or has settled the Claim with the Owner without the Subcontractor's consent, the Subcontractor may pursue the Claim in litigation.

12.2.4 Subcontractor Bound/Settlement. The Subcontractor agrees to be bound by all preliminary and final decisions of any board or court as to any Claims, whether or not the Subcontractor is a party to the proceedings.

12.2.5 Limitation. The Subcontractor shall have no greater right or claim against the Contractor as to such Claims than the Contractor has against the Owner. The Contractor shall not be liable to the Subcontractor in excess of any sum actually received from Owner by, or on behalf of, the Subcontractor with respect to such Claims. The Subcontractor waives all rights to penalties that might otherwise be recoverable due to its having to resort to dispute resolution proceedings to recover sums for Subcontract Work, or from the Contractor's withholding payments to the Subcontractor, in accordance with the Subcontract terms, during the pendency of such proceedings.

12.3 Duty To Continue Work. The Subcontractor shall proceed with the Work, including any disputed portion thereof, without interruption or delay, while any Claim is being considered, arbitrated or litigated. Subcontractor agrees to comply with Contractor's direction to proceed with work that is the subject of a good faith dispute, and failure to continue to work diligently during the pendency of a dispute or claim shall constitute a breach of the Subcontract.

12.4 Jurisdiction. All Claims arising from or relating to the Subcontract that are not disposed of pursuant to this Subcontract shall be resolved by bench trial in the Court of Common Pleas of Lancaster County, Pennsylvania. Subcontractor consents to jurisdiction and venue in this forum for all disputes related to the Subcontract. Each party agrees that it waives its right to trial by jury of any such Claim. Notwithstanding this provision, Contractor shall have the right to consolidate or join Subcontractor to any other dispute resolution proceeding to which Contractor is a party if the dispute involves questions of law or fact related to Subcontractor and/or Subcontractor's Work.

### **ARTICLE XIII...BREACHES AND REMEDIES**

13.1 Breach of Subcontract. Any failure of the Subcontractor to fulfill its obligations under the Subcontract shall constitute a breach of the Subcontract. Breach shall include, but is not limited to, the following: (1) the Subcontractor fails to prosecute the Work diligently, in accordance with established schedules, or to make such progress in the Work as the Contractor reasonably believes is necessary to complete the Work within the time required by this Subcontract; (2) the Subcontractor fails to perform the Work in a good and workmanlike manner, to maintain adequate quality control of its Work, or to correct defects in the Work promptly upon notice by the Contractor; (3) the Contractor reasonably determines that the Subcontractor has abandoned the Work; (4) the Subcontractor fails to provide adequate supervision, direction or control to its sub-subcontractors or vendors; (5) the Subcontractor has failed to pay any subcontractors, laborers, mechanics, materialmen or suppliers when payment is due; (6) the Subcontractor violates any safety requirements applicable to the Project or otherwise creates an unsafe condition; (7) the Subcontractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition under any chapter of the Bankruptcy Code, has an involuntary petition filed against it, has a receiver appointed, or files for dissolution or otherwise is dissolved; (8) the Subcontractor fails to pay its debts, including wages to its employees, in a timely manner, or (9) the Contractor has reasonably determined that the Subcontractor does not have the financial ability to carry out its obligations under this Subcontract and the Subcontractor fails to give the Contractor prompt and reasonable assurances of its ability to perform.

13.2 Notice Regarding Breach. In the event Subcontractor breaches any provision of the Subcontract, Contractor may give written notice to Subcontractor describing the breach and requesting that Subcontractor cure the breach ("Notice to Cure"). Unless a different time period is set forth in the Notice to Cure, Subcontractor shall have forty-eight (48) hours to cure the breach. If the breach is not able to be cured within that time period, Subcontractor shall submit in writing a corrective action plan to cure the breach, which plan is subject to Contractor's approval. If approved, Subcontractor shall commence the cure of the breach and to diligently proceed to cure the breach in accordance with the corrective action plan. If rejected by Contractor, or if Subcontractor fails to complete the corrective action plan in the agreed upon time, Contractor shall have the right to exercise all other remedies set forth herein. In the event of an emergency affecting the safety of persons or property, the Contractor may proceed with the remedies set forth herein without advance notice to Subcontractor.

13.3 Contractor's Right to Take Corrective Action. If Subcontractor has failed to timely respond to a Notice to Cure and/or fails to remedy the breach as required by the Notice to Cure, Contractor shall have the right, but not the obligation, to take corrective action, without prejudice to any other rights or remedies. Contractor may, in its discretion, (i) coordinate directly with any subsubcontractor or vendor supplied by Subcontractor to provide supplemental direction, supervision, or to take other measures to ensure uninterrupted progress of the Work; (ii) supply, or contract with one or more additional contractors to supply, such workers, materials, equipment, and/or other facilities as the Contractor deems necessary for the correct and timely completion of the Work, or any part thereof, and charge the cost thereof to the Subcontractor; and/or (iii) withhold payment of any moneys due to the Subcontractor pending resolution of costs incurred and completion of any necessary corrective action. The Subcontractor shall not be entitled to any further payment until all the work necessary to remedy the breach is finished. Subcontractor shall be liable for all costs, damages, and expenses incurred by the Contractor in remedying the breach, which shall include five-percent (5%) overhead and a ten-percent (10%) mark-up on work performed by other contractors, costs for Contractor personnel at standard billing rates, and the recovery of any reasonable attorneys' fees related to the breach. If the unpaid balance of the amount to be paid under this Subcontract shall exceed the cost of breach, such excess shall be paid to Subcontractor once the cause of the breach has been cured; if such expense shall exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

13.4 Declaration and Termination for Default. In addition to other rights identified herein, if Subcontractor has failed to timely

respond to a Notice to Cure and/or fails to remedy a breach as required by a Notice to Cure, Contractor may declare Subcontractor in default of the Subcontract, upon further written notice to the Subcontractor. Once a default is declared, no additional notice of breach shall be required. If Subcontractor is in default of its obligations under the Subcontract, the Contractor shall have the option, but not the obligation, to terminate the Subcontract for default.

13.4.1 Procedure. Contractor shall give written notice to Subcontractor setting forth its intent to terminate for default. The termination shall take effect on the date specified in the notice of default termination, without further notice, or, if no date is specified, twenty-four (24) hours after the date of the notice, unless revoked, in writing, by the Contractor. Upon default termination, the Contractor may, at its option, enter on the premises and take possession, for the purpose of completing the Work, of all materials and equipment of the Subcontractor. The Contractor may complete the Work itself or through others, by whatever method the Contractor deems expedient.

13.4.2 Payments/Damages. In case of termination for default, the Subcontractor shall not be entitled to receive any further payment. Subcontractor shall be liable for all costs, damages, and expenses incurred by the Contractor in remedying the default, in completing the Work, or as a result of the termination, including a five-percent (5%) overhead and a ten-percent (10%) mark-up on work performed by other contractors, costs for Contractor's personnel at standard billing rates, liquidated damages, and/or attorney's fees, all of which shall be deducted from any moneys due or to become due the Subcontractor.

13.4.3 Recovery from Surety. In addition to other provision set forth herein related to the recovery of attorney's fees, Subcontractor and/or Subcontractor's surety (if applicable) shall reimburse the Contractor for all costs, expenses, and attorney's fees incurred by the Contractor in connection with a default by the Subcontractor. The obligation to compensate Contractor for reasonable attorney's fees shall be incorporated by reference to any performance bond provided by Subcontractor.

13.4.4 Wrongful Termination. If it is determined that the Contractor's termination of the Subcontract for default was wrongful, the Subcontractor's remedies for injuries caused by the termination shall be limited to the following: (1) if the termination was prompted by wrongful actions or determinations of the Owner, the Subcontractor's sole remedy shall be payment of those damages actually paid to the Contractor on account of the wrongful actions or determinations with respect to the Subcontractor; or (2) if the termination was not prompted by the Owner's wrongful actions or determinations, then the Subcontractor's remedy shall be the same as in cases of termination for convenience.

13.5 Remedies Cumulative. The remedies set forth herein are cumulative, and shall not abridge or otherwise limit any additional remedy Contractor may have, in law or equity.

13.6 Termination for Convenience.

13.6.1 If the Owner exercises a right under the Owner/Contractor Contract to terminate all or a portion of the Owner/Contractor Contract for its convenience, and all or a part of the Subcontract Work is thus terminated, the Contractor shall have a right to terminate the Subcontract for its convenience, to the same extent. The Subcontractor's relief for such a termination shall be limited to the relief the Contractor receives from the Owner with respect to the Subcontract Work.

13.6.2 The Contractor may, upon written notice to the Subcontractor, terminate this Subcontract for its own convenience, whether the Subcontractor has defaulted or not. Such a termination for the convenience of the Contractor will be effective immediately upon the Subcontractor's receipt of the notice of termination. The Subcontractor's sole and exclusive remedy for termination pursuant to this Subparagraph shall be payment of the following: (1) mobilization costs, but only to the extent that they represent actually incurred and documented costs paid for the transport or set-up of equipment or materials, or similar tasks necessary to the commencement of the Work; (2) for lump sum price items (other than mobilization), a percentage of the agreed lump sum price based on the reasonable value of the Work properly performed up to the time of the termination; (3) for unit price items, the agreed unit price multiplied by the number of units actually and properly completed as of the time of termination and accepted by the Owner; and (4) reasonable and documented costs the Subcontractor incurs in terminating any subsubcontracts or rental or purchase agreements in effect at the time of the termination, without any mark-up for overhead or profit.

13.6.3 A termination for convenience shall not relieve the Subcontractor of any responsibility it would otherwise have under the Subcontract to correct Work that is defective or otherwise not in conformity with the Subcontract, or to pay

any costs arising from such defective or non-conforming Work. The Contractor does not waive any right or claim to damage which it had under the Subcontract prior to termination, and may pursue or continue to pursue any cause of action arising from actions or omissions of the Subcontractor before termination.

## ARTICLE XIV... MISCELLANEOUS

14.1 Independent Contractor. The Contractor has contracted with the Subcontractor, and the Subcontractor is acting at all times pursuant to this Subcontract, as an independent contractor. Nothing herein shall be construed to create any joint venture, joint employment, franchise, or other relationship other than that of an independent subcontractor. Subcontractor is responsible for the means and methods to accomplish its Work and for retaining and hiring personnel to perform its Work.

14.2 Notices. All notices shall be addressed to the parties at the addresses or e-mail addresses stated in Schedule E to the Subcontract. Notice shall be considered as delivered when transmitted via e-mail; when postmarked, if dispatched by registered mail; or when received in all other cases.

14.3 Applicable Law. This Subcontract shall be governed by and construed in accordance with the laws of the state where the Project is located, without regard to its conflict of laws provisions.

14.4 Severability and Waiver. The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. The failure of the Contractor to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Subcontract, or to exercise any right herein, shall not be construed as a waiver of relinquishment of such term, covenant, conditions or right as respects further performance.

14.5 Entire Agreement. This Subcontract recites the entire agreement between the parties hereto concerning the subjects addressed by this Subcontract, and, except as otherwise explicitly agreed in writing, supersedes all prior or contemporaneous negotiations, representations, or agreements, oral or written, between the parties. The Subcontract may not be modified except in a writing executed by the parties.

14.6 Schedules. Any Schedules identified below are incorporated into, and made part of, this Subcontract. Additional terms set forth in the attachments shall prevail over conflicting terms set forth in the body of this Subcontract.

14.7 Coordination of Documents. All of the documents comprising this Subcontract, including any drawings, specifications, and other Contract Documents, are intended to be read together, so that what is called for by one is called for by all. Subcontractor acknowledges it has reviewed the Contract Documents in advance of the execution of this Agreement. Any error, ambiguity, inconsistency, or omission therein which Subcontractor was aware of, or should have been aware of, may not serve as the basis for an increase in the Subcontract Amount or the time to perform the Subcontractor's Work. If the Subcontractor subsequently discovers any inconsistency among the various documents, the Subcontractor shall notify the Contractor, in writing within seventy-two (72) hours of discovery, or in sufficient time for the Contractor to comply with the requirements of the Owner/Contractor Contract and in any event before the affected Work is performed. Any work performed by Subcontractor without written authorization shall at Subcontractor's own risk. In the event of any inconsistency, or conflict, within or between parts of the Contract Documents, the provision providing the greater right to the Contractor or the greater obligation on the Subcontractor shall prevail. In the event of any inconsistency, or conflict, within or between parts of the Contract Documents, or between the Contract Documents and any applicable standards, codes or ordinances as they relate to performance of the Work, the Subcontractor shall (i) provide the better quality or greater quantity of Work at no additional cost, or (ii) comply with the more stringent requirements at no additional cost, unless the Contractor directs to the contrary.

14.8 BIM and Technology Tools. If a building information model is available for the Project, Subcontractor's use of all or a portion of the building information model shall be at Subcontractor's sole risk, unless a protocol is otherwise agreed upon. BIM information does not supersede the requirements of the Contract Documents or Subcontractor's obligations under the Subcontract. If an electronic project management or collaboration tool is used on the Project, Subcontractor agrees to use it when requested and training time for such tools is included in the Contract Amount. If an electronic payment or invoice management tool is used on the Project, Subcontractor shall use it for the submission of invoices and Subcontractor agrees that compliance therewith is a condition to receipt of payment.

14.9 Prevailing Party Provision. In the event that a party to this Subcontract institutes a legal action of any kind against the other

party, based on any failure or alleged failure to perform in accordance with this Subcontract, the prevailing party shall, in addition to any other relief to which it may be entitled under this Subcontract or in final judgment, be entitled to collect from the other party its costs, expenses and reasonable attorney's fees in pursuing the action.

14.10 Confidentiality. Subcontractor shall hold in strict confidence and shall not use or disclose or permit the use or disclosure of any information related to the Project, the Work, or the Subcontract that is designated or is reasonably inferable as confidential, proprietary, business-sensitive, or is otherwise protected information, except the extent necessary for Subcontractor's performance of the Work. The foregoing shall not apply to the extent any information at the time of the disclosure was in the public domain other than by breach of this Subcontract, or that must be disclosed in accordance with applicable law or order of public authority. In the event Subcontractor receives a subpoena or other order of public authority that would require the disclosure of confidential information, Subcontractor shall timely inform Contractor in order to allow it to intervene to protect any rights in the information.

Subcontractor shall further comply with any requirements related to confidentiality or the protection of information related to the Project required by Owner, at its own expense.

14.11 Assignment. Neither the Subcontract, nor the proceeds of the Subcontract, may be assigned, in whole or in part, without the Contractor's written consent. Any assignment by Subcontractor, including the assignment of any accounts receivable, without Contractor's written consent shall be considered a breach of contract, entitling Contractor to exercise all rights set forth herein in the event of a breach. Any assignment shall be subject to all terms and conditions of the Subcontract.

14.12 Contingent Assignment of Subcontracts. Subcontractor agrees that this Subcontract is assigned by the Contractor to the Owner provided that: 1) the assignment is effective only after termination of the Owner/Contractor Contract by the Owner for cause, and 2) the Owner notifies the Subcontractor and Contractor in writing of the Owner's exercise of the assignment, and 3) the assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Owner/Contractor Contract.



14.13 Schedules, Attachments, and Exhibits

<b>Schedule A</b>	Scope of Work and Subcontract Prices
<b>Exhibit A</b>	Drawings, Specifications and Addenda
<b>Schedule B</b>	Insurance Requirements
<b>Schedule C</b>	Disclosure of Due Dates for Receipt of Payments from the Owner
<b>Schedule D</b>	Designation of Contractor Authorized Representative(s)
<b>Schedule E</b>	Notices
<b>Schedule F</b>	Supplemental Provisions
<b>Schedule G</b>	Form of Conditional Waiver of Claims and Liens
<b>Schedule H</b>	Final Release and Waiver of All Claims and Liens
<b>Schedule I</b>	Second Tier Subcontractors and Suppliers List Sworn Statement
<b>Schedule J</b>	Release and Affidavits Second Tier Subcontractor or Supplier

**BOTH PARTIES HAVE READ AND UNDERSTAND THIS SUBCONTRACT. THIS SUBCONTRACT IS NOT BINDING UPON THE CONTRACTOR, UNTIL ACCEPTED AND SIGNED BY THE CONTRACTOR.**

**Wohlsen Construction Company**

By: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature

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

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

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

## SCHEDULE "A" SCOPE OF WORK AND SUBCONTRACT PRICES

### SCOPE OF WORK

Provide all drawings, specifications and addenda per attached Exhibit A, including but not limited to, the following specification sections: **Work in accordance with this Subcontract, including the**

### CLARIFICATION(S) / QUALIFICATION(S)

### GENERAL REQUIREMENTS FOR SUBCONTRACTORS

In the case of conflict between these General Requirements and the Contract Documents, these General Requirements shall prevail.

#### Subcontractor's Use of Construction Site and/or Premises:

- A. Access into the construction site is only at locations designated by Contractor.
- B. Placement on-site of any of the Subcontractor's equipment, including office trailers or storage containers, and the on-site storage of construction materials, must be approved by Contractor. The Subcontractor is at all times responsible for the protection and security of any of its stored materials and equipment.
- C. Subcontractor shall be responsible for all flagman and local police details, including costs, as may be required for their material deliveries to the site.
- D. The consumption/use of controlled substances, including alcoholic beverages, is not permitted on the Project. Smoking or smokeless tobacco is not permitted.
- E. The Subcontractor will be liable to the Contractor for all costs incurred by the Contractor due to the Subcontractor's failure to keep all surrounding streets clean and free from mud, dirt and debris from its operations.

#### Temporary Facilities:

- A. Temporary power for small tools and temporary light will be supplied at locations designated by Contractor during normal working hours. Subcontractor is responsible for providing generators as needed prior to the installation of the incoming temporary electric service. Any connections of Subcontractor's equipment and supplemental lighting will be Subcontractor's responsibility at its own expense.
- B. Temporary water will be provided at locations designated by Contractor during normal working hours. Subcontractor shall provide temporary water for its Work prior to the installation of the temporary water service.
- C. No company or manufacturer signs, logos, slogans, etc. will be erected or installed at the Project site nor permitted on components being installed without approval by Contractor.

#### Existing Conditions and Measurements:

- A. Work includes all layout and engineering as required for the installation of the Subcontractor's Work from survey control points provided by Contractor.

#### Interruption of Existing Utilities:

- A. Any utility shut-off as required by Subcontractor must be scheduled through Contractor at least three (3) days prior to required utility shut-off. Subcontractor shall be responsible for the notification of applicable utility companies.
- B. Subcontractor will maintain and/or replace any fencing, temporary barricades and/ or fall protection damaged or removed by its field Work force or operations at its expense.

#### Coordination of the Work:

- A. Subcontractor is required to use the specified collaboration software as directed by the Contractor.
- B. Subcontract includes performing "out-of-sequencing" Work as required by Contractor.

#### General Safety and Protection:

- A. There will be a mandatory Safety Orientation for ALL new workers on their first day of work on this jobsite.
- B. Subcontractor will submit a comprehensive Site Specific Safety Program to Contractor prior to commencing Work onsite.
- C. Subcontractor shall conduct weekly Safety Training for its workers and submit the Tool Box Meeting Minutes to Contractor by the end of the week.
- D. When requested or required by Contractor, a Job Safety Analysis Form will be completed by Subcontractor and submitted to

Contractor as early as possible, but not later than 2 weeks prior to undertaking the Work.

E. It is Subcontractor's responsibility to attend Pre-Installation Meetings as scheduled by Contractor to make sure that all safety and site utilization issues related to the performance of their Work, and the Work of others, is reviewed.

F. Subcontractor shall be responsible for securing or removing from open floors all materials subject to possible wind damage or being blown off the building. Subcontractor will maintain adequate monitoring of its Work and material and provide personnel for wind patrol as necessary.

G. Subcontractor may temporarily remove safety rails/cables, floor/wall opening protection, and any other safety equipment with permission from, and for a duration as agreed to by, Contractor. Subcontractor shall return safety equipment to its original condition and position upon completion of Work requiring its removal.

Miscellaneous:

A. Subcontractor shall provide all premium time and costs in connection with tie-ins to existing facilities or equipment crane picks, or any other Work of this nature that is required to be completed outside normal working hours.

B. All requisitions will be emailed to finance@wohlsen.com and to the Contractor's Project Manager.

C. As-Built drawings are to be maintained throughout the duration of the Project Final as-built drawings will be submitted in both hard and electronic format no later than two weeks after Substantial Completion of the Subcontractor's Work.

D. Include a line item on your Schedule of Values titled "Site Working Conditions" which are those costs needed to comply with Article 7.19.

**EXCLUSION(S)**

**UNIT PRICE(S)**

**SCHEDULE(S)**

**BILLING RATE(S)**

**ALTERNATE(S)**

The following alternates may be added to or deleted from the Subcontract by written Change Order:

**DOCUMENTS**

**BREAKDOWN OF COSTS/PHASE NUMBER(S) (allowances must be identified separately)**

**EXHIBIT "A"**  
**DRAWINGS, SPECIFICATIONS and ADDENDA**

SAMPLE

**SCHEDULE "B"**  
**INSURANCE REQUIREMENTS**  
 Wohlsen Construction Company  
**VENDOR INSURANCE REQUIREMENTS**

The term "Vendor" shall mean and include all Suppliers, Subcontractors and Sub-Subcontractors of every tier.

Prior to commencement of any Work on the Project site, and as a condition precedent to payment, each Vendor is required, at its sole expense, to maintain the following insurance on their own behalf, with an insurance company or companies having an A.M. Best Rating of "A-Class" or better and to furnish to Wohlsen Construction Company, Certificates of Insurance and the required endorsements evidencing same and reflecting the effective date of such coverage as follows:

1. **Certificate Holder:**  
 Wohlsen Construction Company  
 548 Steel Way  
 Lancaster, PA 17604-7066

Send Certificates and Endorsements to: insurance@wohlsen.com.

2. **Coverages:**

- 2a. **Workers' Compensation and Employers-Liability:** As required by the State in which the Work is to be performed and elsewhere as may be required and shall include, where applicable, U.S. Longshoremen's and Harbor Worker's Coverage, but no less than:
 

Bodily Injury by Accident:	\$100,000.00
Bodily Injury by Disease:	\$100,000.00
Bodily Injury by Disease (Per Occurrence Aggregate):	\$500,000.00

This policy must include a Waiver of Subrogation in favor of Wohlsen Construction Company and its owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships.

- 2b. **Commercial General Liability:** (including Premises-Operations, Independent Contractors, Products/Completed Operations, Broad Form Property Damage, Contractual Liability and Explosion, Collapse and Underground Coverage's, and personal injury).  
 Occurrence Form
 

General Aggregate (Per Project)	\$2,000,000.00
Products Completed Operations Aggregate	\$1,000,000.00
Each Occurrence	\$1,000,000.00
Personal and Advertising Injury	\$1,000,000.00
Fire Damage (any one fire)	\$50,000.00
Medical Expense (any one group)	\$5,000.00

This policy must include a Waiver of Subrogation in favor of Wohlsen Construction Company and its owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships.

Unless otherwise indicated, Products and Completed Operations Coverage must be maintained for a period of at least two (2) years after Substantial Completion of any Project.

- 2c. **Automobile Liability**

Bodily Injury and Property Damage	\$1,000,000.00
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 (includes owned and hired/non-owned vehicles)

This policy must include a Waiver of Subrogation in favor of Wohlsen Construction Company and its owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships.

2d.	Commercial Umbrella Liability	
	Occurrence Limit	\$1,000,000.00
	Aggregate Unit (where applicable)	\$1,000,000.00

This policy is to apply excess of the Commercial General Liability, Commercial Automobile Liability and Employers Liability Coverages

This policy must include a Waiver of Subrogation in favor of Wohlsen Construction Company and its owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships.

3. **Blanket Additional Insured**

3a. Each Certificate must include the following statement in the Description section:

All work performed for Wohlsen Construction Company, and its owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships. Additional Insured: Wohlsen Construction Company, the Owner and their owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships, and their officers, directors and employees. All other additional insured's, as required by the Owner/Contractor Contract and any other written contract or agreement, are included with respect to General Liability, Automobile Liability and Excess Liability. If required by written contract or agreement, General Liability is provided on a Primary and Noncontributory basis, including products and completed operations coverage. If required by written contract or agreement, which is executed before a loss, to waive Named Insureds right of recovery from others, we agree to waive rights of recovery in relation to General Liability, Automobile Liability, Excess Liability and, if permitted by the applicable state law, Workers Compensation coverage. This waiver of rights applies only to the above mentioned contracts and shall not be construed to be a waiver with respect to any other operations in which the insured has no contractual interest.

3b. One of the following endorsements, or their equivalent, must be furnished with the Certificate of Insurance reflecting the inclusion of the interests of Wohlsen Construction Company, the Owner, and each of their respective owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships and the respective agents consultants, principals, partners, servants, officers, stockholders, directors and employees and all other additional insured's, as required by the Owner/Contractor Contract and any other written contract or agreement, are included with respect to General Liability, Automobile Liability and Excess Liability as ADDITIONAL INSURED for both on-going and completed operations.

1. Endorsement CG-2010 (1985), or
2. Endorsement CG 20 37 (07/04) accompanied by CG 2010 (07/04), or
3. Blanket Endorsement or Policy Wording providing for both on-going and completed operations

4. Coverage is primary for the Vendor and Wohlsen Construction Company and its owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships, and (if applicable) any other additional insureds.

5. **Waiver of Subrogation**

5a. The Vendor waives all rights of subrogation against Wohlsen Construction Company and its owned, controlled, affiliated or associated subsidiary companies, corporations and/or partnerships, the Owner, and all Additional Insureds for loss or damage covered by any of the insurance maintained by the Vendor.

5b. If any of the policies of insurance required under this Vendor require an endorsement to provide for waivers of subrogation, then the named Insureds of such policies will cause them to be so endorsed.

6. The amount and coverage of insurance provided in the aforementioned insurance coverages shall not be construed to be a limitation of the liability on the part of the Vendor.

7. In the event of a failure of the Vendor to furnish and maintain these insurance requirements and to furnish satisfactory evidence thereof, Wohlsen Construction Company shall have the right, but not the obligation, to acquire the same for all parties on behalf of the Vendor who agrees to furnish all necessary information thereof and to pay the cost thereof to

Wohlsen Construction Company immediately upon presentation of an invoice.

8. Subcontractor is responsible for any loss not covered by the applicable builder's risk policy, including but not limited to any deductible, coinsurance and/or self-insured retention requirements. Contact the Contractor for additional information.
9. In no event is the Vendor to begin Work at the site until this Certificate of Insurance showing coverage in the aforementioned amounts is approved by Wohlsen Construction Company. Any Work performed without having the Certificate of Insurance received and approved by Wohlsen Construction Company is at the Vendor's own risk and expense. Payment will not be made to the Vendor until Wohlsen Construction Company has received all required certificates and endorsements.

SAMPLE

**SCHEDULE "C"  
DISCLOSURE OF DUE DATES FOR RECEIPT OF PAYMENTS FROM THE OWNER**

**SCHEDULE "D"  
DESIGNATION OF CONTRACTOR AUTHORIZED REPRESENTATIVE(S)**

**SCHEDULE "E"  
NOTICES**

Notices to Contractor should be delivered to:

Notices to the Subcontractor should be delivered to:

SAMPLE



**SCHEDULE "F"  
SUPPLEMENTAL PROVISIONS**

SAMPLE

## SCHEDULE "G" FORM OF CONDITIONAL WAIVER OF CLAIMS AND LIENS

Upon receipt of the amount of \$ \_\_\_\_\_, ("Subcontractor") hereby conditionally waives, releases and discharges Wohlsen Construction Company ("Contractor"), its sureties, and other guarantors or obligors on the Bond or other undertaking, and \_\_\_\_\_ ("Owner"), from any and all rights Subcontractor has to assert mechanics' lien rights against \_\_\_\_\_ ("Owner's Property") and from any and all causes of action, suits, debts, accounts, damages, encumbrances, judgments, liens, claims, and/or demands whatsoever, in law or equity, which Subcontractor and/or its successors and/or assigns ever had, now have, or ever will have against the Contractor, Owner, and/or the Owner's Property by reason of the Subcontractor's Work performed or materials or equipment supplied for \_\_\_\_\_ ("Project"), \_\_\_\_\_, through \_\_\_\_\_ ("Date") and through Application For Payment No. \_\_\_\_\_.

This waiver covers a progress payment for such Work, materials, or equipment through the stated Date, and does not extend to retention or to Work performed or materials or equipment supplied after the stated Date. The waiver is conditioned only upon the Subcontractor's receiving payment from the Contractor in the amount identified above.

Subcontractor certifies that it has paid for all labor, equipment, material, supplies and services which have been paid to Subcontractor under previous payments issued by the Contractor.

Upon receipt of such payment, this waiver shall become effective, without further conditions, as a release pro tanto of Subcontractor's rights to assert a mechanics' lien or to claim under any payment bond. Any person who receives this Waiver should verify that payment has actually been received before relying on the Waiver.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

The individual who has before me signed the foregoing Form of Conditional Waiver of Liens on the date shown, being first duly sworn, deposes and says that they are authorized to execute the foregoing on behalf of the Subcontractor/Supplier indicated above and that the statements contained herein are true:

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## SCHEDULE "H"

### FINAL RELEASE AND WAIVER OF ALL CLAIMS AND LIENS

WHEREAS, \_\_\_\_\_ ("Subcontractor") has performed work or furnished material under a subcontract and/or purchase order agreement (collectively a "Subcontract") with Wohlsen Construction Company ("Contractor") for the construction project known as \_\_\_\_\_, Job Number \_\_\_\_\_, located at \_\_\_\_\_ for \_\_\_\_\_ (hereinafter the "Owner"). Subcontractor, upon receipt of the amount indicated below, hereby certifies and represents that it has received full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used in connection with his work under said Subcontract.

In consideration of the amounts and sums previously received, and upon the receipt of \$\_\_\_\_\_ as identified on Application For Payment No. \_\_\_\_\_ being the full and Final Payment due, Subcontractor does hereby release and forever discharge the Owner and Contractor, their officers, directors, employees, trustees, affiliates, agents and subsidiaries from any and all claims, delay claims, mechanic's and materialman's liens and other liens and rights of liens upon the premises described above, now or in the future, and upon improvements now or hereafter thereon, and upon the monies or other considerations due or to become due from Owner and/or Contractor.

Subcontractor further represents that it has properly performed all work and furnished all materials of the specified quality per plans and specifications and in good and workmanlike manner, fully and completely; that it has paid for all the labor, materials, equipment and services that it has used or supplied, that it has no other outstanding and unpaid applications, invoices, retentions, holdbacks, expenses employed in the prosecution of work, chargebacks, or unbilled work or materials against Owner and/or Contractor as of the aforementioned last and final payment application; and that any materials which have been supplied or incorporated into the above premises were either taken from its fully-paid or open stock or were fully paid for and supplied on the last and final payment application or invoice.

Subcontractor further agrees to the fullest extent of the law to indemnify and hold harmless the Owner and/or Contractor from and against all costs, damages, claims, causes of action, and judgements, including attorney's fees, arising out of or in connection with the claims or liens against the Owner and/or Contractor which arise out of the performance of the work under the Subcontract asserted by Subcontractor or any of their respective suppliers, materialmen or subcontractors or any tier thereof or any of their representatives, officers, agents or employees, except for claims arising out of the sole negligence or willful misconduct of the party indemnified or held harmless.

The individual signing this release further represents and warrants that he/she is duly authorized and empowered to sign and execute this waiver on his/her own behalf and on behalf of the company or business for which he/she is signing. The foregoing shall not relieve Subcontractor of its obligations under the provisions of said Subcontract, as amended, which by nature survive completion of the Work including without limitation, warranties, guarantees and indemnities.

\_\_\_\_\_  
AUTHORIZED SIGNER

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

The individual who has before me signed the foregoing Sworn Statement on the date shown, being first duly sworn, deposes and says that they are authorized to execute the foregoing on behalf of the Subcontractor indicated above and that the statements contained herein are true:

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Notary Public

Typed or Printed Name  
My Commission Expires: SEAL

**SCHEDULE "I"**  
**SECOND TIER SUBCONTRACTORS AND SUPPLIERS LIST**  
**SWORN STATEMENT**

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

The affiant, (1) \_\_\_\_\_, being first duly sworn on oath deposes and says that he is  
 (2) \_\_\_\_\_ of (3) \_\_\_\_\_ who has contracted with and for the benefit of (4) Wohlsen Construction  
 Company for (5) \_\_\_\_\_ ("Work") on the following described premises: (6)

(1) Executor's Name; (2) Executor's Title; (3) Firm Name; (4) Owner or General Contractor; (5) Brief Work Description; (6) Site Location

**Subcontractor represents that:**

- 1) The following Subsubcontractors/Suppliers will, or are expected to furnish labor and/or materials to the Project in the approximate amounts indicated;
- 2) All lien waivers provided by Subcontractor to Contractor are true, correct and genuine and delivered unconditionally;
- 3) There are no claims, legal or equitable, to defeat the validity of said waivers;
- 4) This statement made by Subcontractor for the purposes of procuring payment from Contractor;
- 5) This is a full, true and complete statement of all such Subsubcontractors/Suppliers, and of the amounts to become due, due and paid.

Item(s)	Name / Address of Subsubcontractors/Suppliers	Phone/Fax	Amount
		Phone: Fax:	\$
		Phone: Fax:	\$
		Phone: Fax:	\$
		Phone: Fax:	\$
		Phone: Fax:	\$

\_\_\_\_\_  
 Affiant

\_\_\_\_\_  
 Typed or Printed Name

State of \_\_\_\_\_ )  
 ) ss.  
 County of \_\_\_\_\_ )

The individual who has before me signed the foregoing Sworn Statement on the date shown, being first duly sworn, deposes and says that they are authorized to execute the foregoing on behalf of the Subcontractor indicated above and that the statements contained herein are true:  
 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
 Notary Public

My Commission Expires: SEAL

**SCHEDULE "J"**  
**SECOND TIER RELEASE AND AFFIDAVIT**  
**UNCONDITIONAL WAIVER AND RELEASE**

**Project:**

**Contractor:**  
Wohlsen Construction Company

**Subcontractor:**

**Owner:**

**Owner's Property:**

The undersigned Subsubcontractor/Supplier hereby confirms the Subsubcontractor/Supplier has been paid in full for all materials, equipment, labor, supplies, or any other work the Subsubcontractor/Supplier has provided to the Project as of the Release Date indicated below. The Subsubcontractor/Supplier releases the Subcontractor, the Contractor, any surety, the Owner and/or the Owner's property from any claim for payment, whether asserted or not, mechanic's lien, stop notice, bond right, or any other right or remedy the undersigned Subsubcontractor/Supplier has for labor, material, equipment, supplies, or any other work supplied to the Project through

\_\_\_\_\_  
("Release Date")

The individual who has before me signed the foregoing SECOND TIER RELEASE AND AFFIDAVIT on the date shown, being first duly sworn, deposes and says that they are authorized to execute the foregoing on behalf of the Subsubcontractor/Supplier and that the statements contained herein are true:

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

SEAL